STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street 21st Floor
San Francisco, CA 94105

SUMMARY OF AND RESPONSE TO WRITTEN PUBLIC COMMENTS IN RESPONSE TO 15 DAY NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS ISSUED ON JUNE 24, 2009

PAY-DRIVE (USAGE BASED AUTO INSURANCE) REGULATION

File No. REG-2008-00020 **September 2, 2009**

NOTE REGARDING PUBLIC COMMENTS AND THE DEPARTMENT OF INSURANCE'S RESPONSES: All public comments that were submitted in a timely manner in response to the 15 day notice of modifications to a text issued on June 24, 2009, are summarized in this document. The Department has responded to all of the public comments below with references to a separate companion document titled RESPONSES TO PUBLIC COMMENTS. The corresponding response or responses to each comment are indicated after each comment summary below.

2-01 Alice Bisno and Randall Farwell, Automobile Club of Southern California (ACSC)

P1, ¶1-3: Appreciates the opportunity to comment on the proposed regulations that will make auto premiums more accurately reflect the risk. These additional comments will offer more consumer friendly options and assure greater accuracy in the use of mileage data for premium pricing.

Response: U.

P1/2, ¶4: [(c)(2)(F)(i)(5)] Prohibiting a device that gives a vehicle location would preclude organizations that offer location based services. The commenter recommends the last two sentences of the section be deleted or the choice be left to the consumer.

Response: N.20. These two sentences have been replaced with alternative language.

P2, ¶1: [(c)(2)(F)(ii)] The commenter recommends that mileage discounts should vary depending actuarial justification and actual loss experience. This will provide and incentive to insureds and insurers to participate in mileage verification.

Response: F + V.

P2, ¶2: [(c)(2)(F)(v)] Clarify that if an advertisement is made promoting the mileage verification program that the information provided should be the same and leave the choice of how, when and whether to market up to the insurer.

Response: F.

P2, ¶3: [(c)(2)(F)(vi)] This section imposes unreasonable limitations on mileage bands. Commenter suggests the insurer should be allowed to determine the number of mileage bands.

Response: F + K.

P2/3, ¶4: [(c)(2)(F)(vii)] The commenter suggests (1) that the allowable combination of annual mileage with optional rating factors should apply to both estimated and verifiable mileage not just verified, (2) Insurers should be able to combine all optional rating factors with annual mileage, (3) the weight ordering requirements of Section 2632.8 undermine the ability to actually combine factor and should be rewritten to allow for the combination of mandatory and optional rating factors (except for claims severity and claims frequency), provided that no optional rating factor has the weight higher than the 3rd mandatory rating factor.

Response: B + H.

P3, ¶1: Clarify the scope of patents and/or patent applications held by insurers that collect, monitor, and record data that may have an impact on this regulation.

Response: B + E. The Department does not have jurisdiction over patents.

P3, ¶2: Amend the regulation to allow for a waiver of the rate filing requirement for initial implementation of a mileage verification program provided the insurer can demonstrate that the plan will have an aggregate neutral rate impact. Or allow the verified mileage programs to be treated as requiring only a rules filing.

Response: B + E + O. Further, this regulation does not change when a rate filing, class plan filing or rules filing must be made.

P3, ¶3: The commenter request guidance on how applying the new mileage rating options would not violate the mandatory factor law as enacted by Prop 103. As Price Per Mile will effectively replace earned car years with vehicle miles as the rating basis.

Response: G + M.2 + T.

2-02 Allen Greenberg, PAYDAYS Institute

P1, ¶1: Introductory and supportive comments

Response: A + T + U.

P1, ¶1: Commenter supports per mile pricing.

Response: A.

P1, ¶1: Supports mileage based policy term for collision and comprehensive coverage.

Response: T.

P1, ¶1: Commenter supports introduction of mileage based policy term for liability coverage.

Response: T.

P1, ¶1: Comment expresses concern for risks regarding expiration of mileage based liability coverage and provides possible solutions.

Response: T.

P1, ¶1: Commenter would support regulations to remove barriers to entry into the California market, such as the seasoning requirement, so companies currently offering per-mile premiums can enter.

Response: E. The seasoning requirement is statutory and cannot be changed by regulation.

P1, ¶1: The Department should assess whether it is feasible to offer substantial financial incentives for offering PAYD and, if not, mandates should be considered.

Response: O + V. CDI lacks statutory authority to provide certain financial incentives, such as tax benefits, to those offering pay-as-you-drive insurance products. The Commissioner has chosen not to require that all insurers offer pay-as-you-drive insurance. The Commissioner believes that the proposed regulations will encourage insurers to offer these products.

P1 and P2: Background and support for regulations; explains benefits of PAYD.

Response: A + U.

P3, ¶¶1-3: Supports PAYD regulations. Suggests improvements to mileage bands

Response: A + K + T.

P3, ¶4: Supports mileage based term for liability coverage. Insurers need ways to collect premium when driver goes beyond paid-for mileage. Suggests methods for collection.

Response: E + T.

P4, ¶1: Supports differential price per mile. However, the Department should not allow insurers to price in a way that encourages drivers to purchase more than they will use.

Response: T.

P4, ¶2: Supports and explains benefits of GPS tracking with informed consent of the driver.

Response: B. The Commissioner determined to adopt those comments opposing use of location tracking.

P4, ¶3: Offering PAYD should be incentivized by waiving rate filing fees and/or other regulatory relief.

Response: S.

P4, ¶4: The Department should remove market entry barriers that are keeping Texas based MileMeter from making its product available in California.

Response: The seasoning requirements are statutory and cannot be changed by this rulemaking proceeding.

P4, ¶5: Incentives for PAYD haven't worked in other states and should be mandated.

Response: O + V. California Insurance Code Section 1861.02 requires that the second mandatory factor in determining automobile insurance rates and premiums is the number of miles a policyholder drives annually. However, beyond this statutory requirement, the Commissioner has determined that he will not require insurers to offer a price per mile insurance option.

P5, ¶1: Concluding remarks are provided.

Response: U.

2-03 Andrew J. Blumberg, Lee Tien, and Peter Eckersley, Stanford University, Electronic Frontier (Joint Comment Dated July 9, 2009)

P.1, ¶1: The proposed amended regulations raise significant privacy concerns. Specific concerns center around the "technological device" option for obtaining verified actual mileage.

Response: V.

P.1, ¶2: The use of verified actual mileage to provide incentive to reduce overall vehicle usage is not opposed. Significant societal benefits could accrue from judicious use of such information to set rates. However, CDI has presented no empirical, factual basis in the record justifying use of verified actual mileage or the use of any technology other than an odometer.

Response: California Insurance Code Section 1861.02(a)(2) provides that the second mandatory factor for rating automobile insurance policies is annual miles driven. This has been considered to mean the estimated annual miles for the 12 month period following policy inception. However, it could also be interpreted to mean the verified actual miles driven. Because this is a legal interpretation, studies are not required. Using verified actual mileage or technology other than an odometer is a choice, not a requirement. N.16.

P.1, ¶3: On what record does the Commissioner make the finding set forth in section 2632.5(c)(2)(F)? What kind of innovation in automobile insurance rating is expected? What are the numerous attendant benefits? How much would premiums be reduced?

Response: Section 2632.5(c)(2)(F) simply states that use of verified miles may enable policyholders to reduce premiums and create incentives for innovation in automobile insurance rating, with numerous attendant benefits. Automobile insurance rating innovations include, for example, new programs whereby policyholders purchase insurance based on the actual number of miles they drive during the policy period, rather than an estimate which falls within a particular mileage band. To the extent consumers drive less, claims costs will decrease, also allowing for lower premiums. Some commenters also pointed out that driving less has other social and environmental benefits. Supporting studies are not required. Premium reductions will depend on the rating plan of a particular insurer and the number of miles an insured drives.

P.1, ¶4: There is no empirical, factual basis that supports the use of a technological device to verify actual mileage. Every car already has an odometer which is protected against tampering and provides mileage information. What is added by permitting use of a technological device, which would seem to be an additional cost?

Response: D. + N.16 + N.17.

P.1, ¶5: There are significant concerns about the unregulated use of a technological device to collect verified actual mileage. This could pose serious threats to the location privacy of drivers and protections should be imposed in the regulations. Prohibiting recording the location of the driver is supported, but the regulation does not go far enough in protecting driver privacy.

Response: N.10 + N.14 + N.16.

P.1, ¶6: It is unacceptable for insurers to coercively require customers to accept technological devices in their cars. The proposed regulations must be amended to permit drivers to participate in the verified actual mileage program by reporting mileage to their insurance agent, sending in a photograph, etc.

Response: D + N.17.

P.2, ¶1: The proposed regulations seem to mandate equality, but they do not. Section 2632.5(c)(2)(F)(iii) provides that a discount may be provided to a policyholder who participates in a verified actual mileage program.

Response: The regulations recognize that cost savings, if any, may be passed on to policyholders participating in a verified actual mileage program, if approved by the Commissioner.

P.2, ¶2 – 3: Section 2632.5(c)(2)(F)(iv) provides that if an insurer offers both a mileage estimation program and a mileage verification program, participation in a mileage verification program shall be voluntary. Thus, insurers offering both estimated and verified actual mileage programs must provide a discount regardless of the method of verification used. But an insurer who offers only a verified actual mileage program is exempt from (F)(iii) and (F)(iv) and may condition participation in its program on a particular method of verification.

Response: N.6. The provisions of section 2632.5(c)(2)(F)(iii) and (iv) do not apply to a policyholder who participates in a mileage estimation program. A discount may be provided to a policyholder who participates in a verified actual mileage program, but not to a policyholder who participates in a mileage estimation program. An insurer offering only a verified actual mileage program may provide a discount to its policyholders.

P.2, ¶4 – 5: Section 2632.5(c)(20(F)(v) provides that an insurer employing verified actual mileage shall market and make available all verification methods it offers to all equally, and shall not offer or use a verification method that is not uniformly promoted and offered to the public. But all insurers need not offer all verification methods equally. Equality is required only for verification methods that the insurer offers. Thus, an insurer offering only a verified actual mileage program may offer only one verification method.

Response: N.6. As is true in connection with any other business model an insurer adopts, a policyholder may choose not to purchase coverage from a particular insurer if the options the insurer provides are not acceptable.

P.2, ¶6 - 7: The restrictions on the use of a technological device must be much more stringent. The information collected must be the minimum amount necessary to allow the policy objective to be implemented. The means of collection must be auditable so the driver can have independent verification of compliance on the part of the insurer. A policy regarding use and storage of the collected data must be explicitly stated.

Response: F + N.1 + N.7.

P.2, ¶8 – P.3, ¶1: The text allows a device to collect information about the car and driver behavior. Nothing in the record describes the information-collection capability of any technological device. Nothing in the proposed amended regulation defines or specifies what a technological device is. The regulations should make clear what a technological device does and does not collect. The innovation and attendant benefits of a verified actual mileage program lie not in greater mileage accuracy but in the other information that may be collected, especially since insurers may use information to calculate automobile insurance rates, which is different from verifying miles. Mileage verification should not be used for collecting other information about drivers.

Response: F + N.16. Car and driver behavior information may not be collected. The regulations provide that an insurer shall only use a technological device to collect information for determining actual miles driven. Except as part of an emergency road service, theft service, map service, or travel service, an insurer shall not collect or store location information.

P.3, ¶2: The text does not specify adequate controls on the use and dissemination of the information collected. The regulations should provide that a technological device will be used only to collect mileage, and no other information. It will not be used to collect, store, or transmit specified vehicle information. The technological device should be auditable by an independent third party so the driver can be assured of compliance. It is technically feasible to have a device that is both auditable and tamper-proof.

Response: F + N.1 + N.7 +N.10+ N.14.

P.3, ¶3: Having strong privacy guarantees will speed the adoption of actual verified mileage programs. Therefore, in addition to protecting the privacy of the drivers, the changes proposed will enhance the likelihood that the Department's goals will be achieved.

Response: A + F.

2-04 Beth Givens and Deborah Pierce, Privacy Rights Clearinghouse; Privacy Activism (Joint Comment Dated July 9, 2009)

P.2, ¶1 - 4: Collection of data through onboard technology poses serious threats to privacy. CDI should be guided by the principles of Fair Information Practices, which stress openness along with related concepts of notice and transparency. The proposed amendments do not give consumers adequate notice of the data that an insurer can or may collect with onboard technology. Potential for secondary uses of data collected through installation of onboard technology is real.

Response: N.2.

P.2, ¶5: CDI's proposed regulations do not incorporate a requirement for data security.

Response: N.1.

P,2, ¶6 - 7: Insurers collect all kinds of data under the regulations. However, nowhere in the proposed regulations does CDI require insurers to disclose the kinds of data that can or may be collected through use of onboard technology.

Response: N.2.

P.2, ¶8, P3, ¶1 - 2: The regulations allow insurers to collect data that is not related to recording actual miles and there is no reason to allow insurers to collect this data. How that other data might be used in the future raises significant privacy concerns, including concerns that the data might be used to set insurance rates and that the data is vulnerable to disclosure. More and more data could be collected, but consumers would never need to be notified of that fact.

Response: F.

P.3, ¶3 - 5: The regulation should only allow collection of the number of miles driven within a given time period. Then consumers will not have to guess what data the insurer might be collecting or how that data might be used. Alternatively, the regulation should require insurers to disclose exactly what information the onboard device collects. When that information is known, consumers will have the option to choose a costlier policy to protect their privacy.

Response: F + N.2.

P.3, ¶6 - 9: California drivers have a right to know that data collected by their insurer may someday be used against them in a court of law. Information gathered for one purpose will almost certainly be of use for another purpose. The intended purpose of allowing an onboard technological device is to record actual miles, but other information may also be collected and disclosed.

Response: N.3.

P.4, ¶ 1 - 2: The proposed regulations do not require insurers to safeguard the personally identifiable information that they collect.

Response: N1.

P.4, ¶3 - 5: Because pay-drive insurance systems may be a harbinger for road tax systems which are likely to replace the fuel tax, and for Intelligent Transportation Systems, California should lead the way in protecting consumer privacy. Revising regulations after the fact to protect privacy rarely works well. We should not design and build systems where people are continuously tracked and monitored.

Response: F + N.14.

P.5, ¶1 - 2: Summary concluding comments are provided.

Response: V.

2-05   Bob Epstein and Robert Fisher, Environmental Entrepreneurs

P1, ¶1: Introductory and supportive comments

Response: U.

P1, ¶2, 4: Comment supports mandatory rather than optional PAYD program.

Response: B + O.

P1, ¶3: The changes made from the original proposed regulation are an improvement.

Response: A.

P1, ¶5: The Department should analyze whether the incentives to participate in the optional program will be effective. There are no documents analyzing how drivers or insurers will respond to the incentives provided. CDI should conduct such an analysis.

Response: B + E + J. The Commissioner believes that the incentives provided for in the regulations will be effective, and will monitor implementation once the regulations are adopted.

P2, ¶1: Combining rating factors can have the effect of diminishing the weight of mileage as a factor in premiums.

Response: H + M.2.

P2, ¶2: Concluding remarks are included.

Response: U.

2-06 Christopher Gay, MileMeter Insurance Company

P1, ¶1 Agrees with the changes made to the initial regulations

Response: A.

P1/2, ¶2 The best way to meet the Commissioner's goal for premiums to reflect the number of miles driven is with per mile pricing.

Response: M.3 + T

P2¶, 1 (c)(2)(F)(6)(vi) Commenter states mileage bands are unnecessary and would allow insurers to avoid using miles as a unit of exposure

Response: F + K.

P2¶, 2 (c)(2)(F)(6)(vii) -- By allowing the combining of optional rating factors this section would allow insurers to avoid using miles as a unit of exposure and would result in obscured pricing with little or no correlation to miles traveled.

Response: H.

P2¶, 3 Requiring mileage bands and the combining of optional rating factors would allow traditional time based policies to masquerade as a mileage based Pay Drive policy.
This would allow business as usual for existing insurers, confusion in the marketplace as consumers try to determine which is the real Pay Mile policy and additional investment to true Pay Mile insurers as they spend money to overcome the confusion.

Response: G + H + K.

P2/3, ¶4 Insurers should be allowed to price the minimum premium as a factor of the overall miles purchased. If 5000 miles are purchased the minimum premium charged should be the cost for 1000 miles.

Response: T.

P3, ¶1 Modify CCR Section 716 to remove the required seasoning barriers for per mile insurers. The commenter believes that CCR Section 716 violates the Commerce Clause of the US Constitution and could be easily fixed if one sentence allowing the Commissioner to waive the seasoning requirements is added.

Response: B + J.

2-07 Dorothy J. Glancy, Santa Clara University School of Law (Comment Dated July 7, 2009)

P.1, ¶1 – 2, 4: The commentor provides her perspective on the background and justification for the regulations. The amendments represent an even more complex, ambiguous, and difficult to understand proposed regulation, and pose even more serious privacy dangers to Californians. The comments distinguish the 2009 proposal from the 2008 proposal.

Response: V.

P.1, ¶3: The proposal makes personal information regarding a driver's behavior vulnerable to privacy invasion and endangers privacy rights. Reference is made to a Guide attached to the comments.

Response: F.

P.2, ¶1: The regulation refers to attendant benefits, but does identify or explain them. Whether they have value or substance is unknown, and they are not based on the record. This proposal is a new regulation.

Response: U + V.

P.2, ¶2 - 4: This is a new regulatory proposal, not related to the original text, and inadequate comment time was provided.

Response: U.

P.3, ¶2: The regulation permits increased access to Bureau of Automotive Repair data to estimate, not verify, annual miles. This change is likely to have a considerable impact on small businesses, but no impact analysis has been conducted.

Response: N.4.

P.3, ¶3: The new verified actual mileage program is expanded and more privacy-invasive. The findings are vague and lack factual foundation.

Response: N.5.

P.3, ¶4: Additional verification methods are set forth, and consumers appear to have no choice among the verification options. Insurers are not required to provide any choices to consumers.

Response: N.6.

P.4, ¶1: The regulations allow odometer readings to be obtained through vendors, but that term is not defined, and could mean an information broker. It is intolerable for an information broker to take charge of a policyholder's personal information. In the past, vendors have been associated with privacy breaches and mishandling of information. Some are out-right privacy predators. The Department has a responsibility to hold insurers responsible for the handling of personal information associated with mileage data.

Response: N.7.

P.4, ¶2: The regulations impose no restrictions, standards, or requirements regarding privacy protection. The Department's privacy regulations require amendment to recognize the new information which may be collected.

Response: N.7 + N.8.

P.4, ¶3: Consumers should also have choices among various mileage verification methods. If insurers are allowed to impose a verification method, that method is likely to be buried in lengthy insurance documents. Many consumers will not know how mileage is to be verified until the time to provide verification arrives, which seems deceptive to consumers. It is unclear what, if any, choices are available to a consumer.

Response: F + N.9.

P.5, ¶1: The mileage verification choices are sufficiently unclear as to appear to provide no choice at all, and a no-choice verification program is not equitable. The program has the potential to hoodwink unsuspecting consumers into agreeing to, for example, accepting technological devices that secretly monitor driver behavior. Reference is made to an attachment to the comments.

Response: N.9 + N.10.

P.5, ¶2: Section 2632.5(c)(2)(F)(i)(4) refers to "an agent of the insured." The language is unclear and may require a policyholder to appoint someone of the insurer's choice for the reporting of odometer readings.

Response: This provision simply allows another person to provide odometer readings to the insurer on the insured's behalf. For example, one family member could report for another family member.

P.5, ¶3 - 4: The language "a technological device shall not be used to collect information about the location of the insured vehicle" fails to recognize that multiple locations of vehicles should be placed off limits because multiple locations are the basis for tracking and profiling. Excluding location may not be interpreted as excluding the areas or geographic regions in which the vehicle is driven. This provision implies that all other information can be collected by insurers. The Department's privacy regulations do not protect any of this new personal information.

Response: F + N.8.

P.6, ¶1 - 2: The language "information collected by a technological device shall only be used to calculate automobile insurance rates" allows insurers to collect information other than mileage information. This allows insurers to collect information, including driving behavior information, so long as it does not include the location of a vehicle. It allows insurers to collect information that they may want to use in future insurance rate calculations. This is inconsistent with the California constitution's guarantee of privacy.

Response: F.

P.6, ¶3: The Department should implement at least four strategies to address the privacy dangers posed by the expanded scope of personal information insurers would be authorized to access through technological devices. First, the proposal should limit the use of technological devices. Second, the proposal should be amended to restrict what vehicle systems can be accessed. Third, insurers using technological devices should keep records of all information collected. Fourth, the Department's privacy regulations should be amended to protect personal information extracted through use of technological devices.

Response: F + B +N.2 + N.8.

P.6, ¶4: In Section 2632.5(c)(2)(F)(i)5, the last two sentences should be replaced with language indicating that any technological device can only be used to verify total mileage driven and must not be used to collect location(s) or driving behavior information.

Response: B + F.

P.6, ¶5: Reference is made to the Guide to Vehicle Technology attached to the comments. Explicit technical provisions should be added to the regulations.

Response: B.

P.7, ¶1: A provision adding the specified explicit technical provisions is very important. Without it, insurers apparently can collect unrestricted types of personal data.

Response: B.

P.7, ¶2: Insurers accessing information through technological devices should be required to maintain a log entry or record regarding that access. Such a logging function could be a required feature of every technological device. Policyholders should be allowed access to these logs and the information which has been extracted. The Department should periodically audit this information.

Response: B. The Department lacks authority to mandate that specified features be incorporated into various automotive technological devices.

P.7, ¶3: The Department should amend its privacy regulations to protect the personal information which insurers may collect under this regulation. Reference is made to comments provided on October 5, 2008.

Response: N.8.

P.7, ¶4: There is a need to revise the Department's privacy regulations in light of amendments to California Insurance Code Section 791.13 operative January 1, 2007.

Response: New Section 791.13(s) provides that an insurer may disclose information from specified reports to an insured. Regulations are not necessary to implement, interpret, or make specific this section.

P.7, ¶4: The regulation authorizes collection of a new category of information, and adds to the types of personal information collected and held by insurers. Therefore, the Department's existing privacy regulations are inadequate. They generally require policyholders to opt-out. However, policyholders who choose to participate in verified actual mileage or price per mile programs should opt-in.

Response: Because Annual Miles Driven is the second mandatory automobile rating factor, insurers currently collect mileage information from policyholders. Policyholders who choose to participate in verified actual mileage or price per mile programs will necessarily opt-in to those programs.

P.8, ¶1: The Department's privacy regulations are silent on how verified actual mileage and price per mile information is handled. The proposed regulations must expressly specify that the verified miles driven and related data is non-public personal information that remains under the control of the consumer and an insurer is permitted to use it only to calculate the applicable insurance premium. Specific language is proposed.

Response: A + B + F + N.8.

P.8, ¶2: The regulations should specify the types of nonpublic personal information for which consumers should have opt-in choices. The Department should require that consumers have more opt-in choices regarding disposition of their personal information.

Response: California Insurance Code Sections 791, et seq., and various other laws, set forth consumers' opt-in, opt-out, and no-opt rights. The Department cannot, by regulation, change those provisions.

P.8, ¶3: California law regulates access to Event Data Recorders and Recorder information. Vehicle Code Section 9951 prevents insurers from accessing "sensing and diagnostic" information. The Department's proposal is inconsistent with this statute.

Response: N.10. To the extent applicable, insurers are expected to comply with Vehicle Code Section 9951, which provides as follows:

(a) A manufacturer of a new motor vehicle sold or leased in this state that is equipped with one or more recording devices commonly referred to as "event data recorders (EDR)" or "sensing and diagnostic modules (SDM)," shall disclose that fact in the owner's manual for the vehicle.

(b) As used in this section, "recording device" means a device that is installed by the manufacturer of the vehicle and does one or more of the following, for the purpose of retrieving data after an accident:

(1) Records how fast and in which direction the motor vehicle is traveling.

(2) Records a history of where the motor vehicle travels.

(3) Records steering performance.

(4) Records brake performance, including, but not limited to, whether brakes were applied before an accident.

(5) Records the driver's seatbelt status.

(6) Has the ability to transmit information concerning an accident in which the motor vehicle has been involved to a central communications system when an accident occurs.

(c) Data described in subdivision (b) that is recorded on a recording device may not be downloaded or otherwise retrieved by a person other than the registered owner of the motor vehicle, except under one of the following circumstances:

(1) The registered owner of the motor vehicle consents to the retrieval of the information.

(2) In response to an order of a court having jurisdiction to issue the order.

(3) For the purpose of improving motor vehicle safety, including for medical research of the human body's reaction to motor vehicle accidents, and the identity of the registered owner or driver is not disclosed in connection with that retrieved data. The disclosure of the vehicle identification number (VIN) for the purpose of improving vehicle safety, including for medical research of the human body's reaction to motor vehicle accidents, does not constitute the disclosure of the identity of the registered owner or driver.

(4) The data is retrieved by a licensed new motor vehicle dealer, or by an automotive technician as defined in Section 9880.1 of the Business and Professions Code, for the purpose of diagnosing, servicing, or repairing the motor vehicle.

(d) A person authorized to download or otherwise retrieve data from a recording device pursuant to paragraph (3) of subdivision (c), may not release that data, except to share the data among the motor vehicle safety and medical research communities to advance motor vehicle safety, and only if the identity of the registered owner or driver is not disclosed.

(e) (1) If a motor vehicle is equipped with a recording device that is capable of recording or transmitting information as described in paragraph (2) or (6) of subdivision (b) and that capability is part of a subscription service, the fact that the information may be recorded or transmitted shall be disclosed in the subscription service agreement.

(2) Subdivision (c) does not apply to subscription services meeting the requirements of paragraph (1).

(f) This section applies to all motor vehicles manufactured on or after July 1, 2004.

P.8, ¶4: Most California vehicle owners do not know Event Data Recorder information exists, that it is potentially useful information against a driver in litigation, and that this data may be tapped into by insurers. The Department is responsible for protecting the privacy interests of Californians in connection with this information. The absence of effective privacy regulations underscores the need to keep insurers and their technological devices away from the personal information contained in internal vehicle technologies as explained in the Guide attached to these comments.

Response: B + N.8 + N.10. As the commentor has noted, Vehicle Code Section 9951 requires disclosure regarding the existence of an event data recorder.

P.9, ¶1: Section 2632.5(c)(2)(F)(i)6 is either unnecessary or an effort to vest in the Commissioner unfettered powers to authorize use of now-unspecified potentially privacy-invasive methods and devices without engaging in formal rulemaking. If this provision seeks to authorize underground regulations, it is invalid.

Response: N.11.

P.9, ¶2: Section 2643.5(c)(2)(F)(ii) appears to allow insurers to change the cost of verified actual miles driven after the policy has been issued. All the insurer has to do is notify the policyholder about the changed cost per mile before a more costly mile is driven. This is a potential financial trap for consumers and it is unfair to allow insurers to increase the cost of insurance when the policyholder had agreed to lower cost per mile rates.

Response: N.12.

P.9, ¶3: Section 2643.5(c)(2)(F)(iii) allows a discount to a policyholder who participates in a verified actual mileage program. The method of verification should not be the unilateral choice of the insurer. The regulation should make clear that choosing among methods of verification is a choice also available to consumers. Otherwise, an insured might be lured to participate in a verified actual mileage program without understanding which mileage verification method the policyholder would be required to accept.

Response: N.6 + N.9.

P.10, ¶1 - 2: Section 2632.5(c)(2)(F)(iv) allows insurers to offer only a verified actual mileage program, and not an estimated annual mileage program. This may result in involuntary use of verified actual mileage programs by consumers who have few, if any, options. This section further erodes informed consumer choice by associating restrictions on consumer choice with “sugar coating” words like “voluntary.” This is objectionable because the reality of the regulation is hidden under soothing language.

Response: N.13.

P.10, ¶3: Section 2632.5(c)(2)(F)(v) uses soothing words to obscure what the provision really does. This section permits insurers to choose which mileage verification method it will offer. Insurers have the option to offer only one verification method. The only restriction is that the chosen mileage verification method must be offered to all consumers in the same way. Given the dangers to privacy posed by some of the mileage verification methods, this provision is as potentially pernicious as it is covert.

Response: N.13 + N.14.

P.11, ¶1: Section 2632.5(c)(2)(F)(vi) is applicable to verified annual mileage programs but not to estimated mileage programs. No explanation is provided.

Response: K.

P.11, ¶2: Section 2632.5(c)(2)(F)(vii) seems to be designed to allow insurer use of optional rating factors to mesh with the additional driver behavior information that insurers would be authorized to collect under verified actual mileage programs. This is inconsistent with Proposition 103 and California's constitutional right of privacy.

Response: N.15 + N.14.

P. 11, ¶3 – P. 12, ¶1: Section 2632.5(c)(2)(G) authorizes a Price Per Mile Option, but it is vague and refers to general characteristics rather than to requirements or other controlling regulatory terms. It would require liability coverages for set time periods, but physical damage and collision coverage ends after purchased miles are used. This is unwise and creates a mish-mash that is difficult to sort out and will be difficult for consumers to understand and manage. Insurers have many options (examples are provided), but consumer choices are virtually absent.

Response: U.

P. 12, ¶2 – 3: Section 2632.5()(2)(G)(iv) and (v) provides insurers with additional information collection powers, as set forth in the comments. The reasons for, or purposes, are not explained. In addition to odometer readings, the regulations do not appear to restrict information that an insurer might decide to require. A policyholder might be required to report the contents of the vehicle's Event Data Recorder. The policyholder could effectively work for the insurer, constantly having to make report, after report, after report.

Response: U.

P. 13, ¶1 – 2: Section 2632.5(c)(2)(G)(v) authorizes insurers to require more than just odometer reading reports. They include a dated photograph of the odometer and reporting the odometer reading to the insurer. Reporting of the odometer reading appears redundant. There is no justification for authorizing insurers to choose verification methods beyond just looking at vehicle odometers.

Response: U.

P. 13, ¶3 – 4: Section 2643.5(c)(2)(G)(vi) seems to authorize insurers to retroactively adjust the number of miles purchased. Such an adjustment should be required, rather than simply permitted. Whether the adjustment is a refund or an offset should be the policyholder's choice. The proposal would leave to the insurer the discretion as to how much miles may be worth for the purpose of these adjustments. The proposal is neither wise not equitable.

Response: U.

Page 14, ¶1: Section 2632.5(c)(2)(G)(vii) introduces the concept of "grace miles" without defining or regulating them, leaving too much discretion to insurers. A standard format should be adopted by regulation.

Response: U.

P. 14, ¶2 – 3: Section 2632.5(c)(2)(G)(viii) details the ways an insurer may notify a policyholder that an odometer reading must be submitted. Some are likely to be ineffective. The choice is, for the most part, the insurer's unilateral choice. Also, the proposal contemplates underground regulation through authorizing Commissioner approval of additional and different types of notification.

Response: U.

P. 14, ¶4 – 5: Section 2632.5(c)(2)(g)(ix) describes three types of price per mile policies among which insurers can choose. It is unclear whether consumers have any choices. The second option does not seem practical, realistic or workable because the policyholder must keep track of the number of miles purchased and the number of miles driven. It appears to create potential traps for consumers.

Response: U.

P. 15, ¶1 – 2: The proposal limits consumer choice. The verified annual mile and price per mile options are so complicated and confusing that consumers are unlikely to understand what options they really have. Significant new threats to the privacy rights of consumers are introduced. The absence of regulatory controls over personal information related to mileage that insurers would be authorized to collect and use presents a serious problem which the Department fails to address. The need for amendments to the privacy regulations is ignored. Insurers would be authorized to collect and use new information which the privacy regulations do not reach. The Department should comply with the Government Code requirements and commence a new formal rulemaking proceeding.

Response: N.1 + N.2 + N.8 + N.10 + U + V.

Summary and Responses to: *A Brief Guide to Vehicle Technology and Information about Driver Behavior*, byProfessor Dorothy J. Glancy, (Attached to Comment Dated July 7, 2009)

P.1, ¶1: Access to information about driver behavior from internal vehicle technologies poses serious privacy dangers. Regulatory proposals authorizing such access create serious privacy threats. Because regulators may not understand the technologies or the privacy dangers they present, the Guide provides this information. Additionally, most drivers are not aware of the technologies and the information they collect.

Response: V + N.14.

P.1, ¶2: The Guide was prepared in response to 2009 proposed regulations authorizing insurers to use technological devices to collect information from policyholders' vehicles to calculate insurance rates. The policyholders whose automobile usage would be monitored are not protected under this proposal. The Department has not proposed amendments to its privacy regulations and there is no protection for the new usage information.

Response: N.8 + N.10 + N.16.

P.1, ¶3: The proposal would authorize insurers to use technological devices to collect personal information for mileage verification purposes and for general rate calculation activities. The proposal contemplates a significant expansion of the amounts and types of personal information without any effort to protect the personal information and privacy interests of consumers.

Response: N.8 + N.10 + N.14.

P.2, ¶1: Existing vehicle technologies are built into automobiles to record and collect data about the behavior of the vehicle and driver. Any responsible regulatory effort that would authorize technical interfaces with vehicles needs to understand both these internal vehicle technologies and the personal information these technologies could make available.

Response: V.

P.2, ¶2 - 4: There is no need to authorize insurers to use advanced technological devices. An odometer records and provides a visual display of the number miles driven by a vehicle without endangering the privacy and other personal information of consumers. An odometer is protected against tampering by federal and state law. To go beyond odometer readings implies that the true purpose is to provide insurers with access to information regarding how, when, and where Californians drive. The proposal opens a Pandora's box of privacy problems. The vehicle technologies should be placed off limits to insurers. Particularly in the absence of safeguards for personal information, information beyond odometer readings is beyond what is necessary to verify mileage.

Response: N.1 + N.14 + N.17.

P.3, ¶1 – P.5, ¶2: The Department does not understand the information that can be accessed through technological devices, despite having been offered the opportunity to obtain an explanation of this vehicle technology. The various technological devices and their functions are detailed. Technological device data are frequently introduced as evidence in court.

Response: N.10 + N.14 + V.

P.5, ¶3 - 4: Federal regulations provide that by 2013, Event Data Recorder data is required to be standardized and generally accessible. Specified standardized data elements are set forth. Additional specified information must be recorded when there is an air bag deployment.

Response: V.

P.6, ¶1 - 3: Most cars, particularly those manufactured after 2000, have electronic devices that collect and record data elements. The data elements set forth in the comment will become both standard and mandatory for all cars having air bags when federal regulations take effect in 2013. The data are retrievable by accessing the Event Data Recorder through the diagnostic link connector, or OBU2, which has been required in all cars manufactured in the United States since 1996. A diagnostic link connector (or OBD2) provides a data port for access to various vehicle data, including Event Data Recorder data. It has been required equipment in all vehicles driven in the United States that were manufactured after 1996. The OBU2 data port is used for retrieving data from the Event Data Recorder, which has recorded information collected by the Sensing and Diagnostic Module, which obtains information from various components built into modern vehicles. After 2013, federal regulations require that vehicle manufacturers license their proprietary software so that Event Data Recorder data are generally accessible.

Response: V.

P.6, ¶4: Event Data Recorder data and the OBU2 data port would be the most likely targets of insurance company technological devices authorized for use. Ordinarily this data port is protected against unpermitted access through locking the car doors. The proposed use of technological devices by insurers would allow insurers to go behind locked doors to extract driver behavior information.

Response: N.10 + N.14 + N.16.

P.7, ¶1: Some automobile sensor data are now transmitted wirelessly when drivers subscribe to various wireless driver-assistance programs. The National Highway Traffic Safety Administration endorses wider availability of wireless automatic crash notification as a safety measure.

Response: V.

P.7, ¶2: In the future, to the extent that the United States Department of Transportation deploys IntelliDrive that includes vehicle-to-infrastructure communication, wireless transmission of sensor data about vehicle and driver behavior will become more common and standardized. Insurers authorized to use technological devices would have even more ways to tap into data about a driver's behavior, often without the driver even being aware of the intrusion.

Response: N.2 + N.10 + N.14 + N.16.

P.7, ¶3: The current version of the regulations has not responded to warnings about the potential for invasions of privacy that are likely to arise when insurers use technological devices to access the types of sensing and diagnostic driver behavior data described in the Guide. The proposal's vague authorization of technological devices threatens to expose an extensive store of personal information to new uses and potential abuses. The technologically collected data could be used to the detriment of Californians and interfere with the right to privacy.

Response: N.8 + N.10 + N.14 + N.16.

2-08   Elliott Bubis, Orange County Citizen and voter

Opposes pay-as-you-drive regulations. Opposes making miles driven a major factor in auto insurance rates.

Response: Proposition 103 already mandates that the number of miles driven annually is the second most important mandatory rating factor. This cannot be changed by regulation.

Higher fuel taxes are the best way to reduce miles driven and cut emissions.

Response: E.

Insurance rates should be based mainly on factors that increase risks of serious injury and death.

Response: G. The mandatory auto rating factors are established by California statute, the first of which is driving safety record.

Among the risk factors for auto insurance, miles driven is a relatively unimportant factor and doesn't merit intrusive electronic monitoring systems.

Response: This may be true but miles driven is still the second mandatory rating factor under California statute.

Reducing miles driven to save fuel and reduce emissions. The fuel tax is the best way to reduce fuel consumption and carbon emissions because it factors in miles driven, fuel efficiency of vehicle, and better mileage from freeway driving versus urban driving. It is also therefore more accurate than an odometer.

Response: E.

Electronic monitoring of mileage is unacceptable and reminiscent of George Orwell's 1984/Big Brother monitoring where we drive.

Response: N.14 + N.20.

Frame Height and Vehicle Compatibility. The commentor provides an example of the kinds of things that should impact automobile insurance rates, related to side impact standards for US cars. Pickup trucks with frames that are higher than automobile frames pose an unnecessary risk to automobile occupants in the event of a collision when the frame of the truck is higher than the frame of the automobile. Sometimes the frame of a truck may be as high as the window of the car (at head level). Better designs that reduce this type of risk should be rewarded with lower insurance rates.

Response: E + G.

Designed to cushion crashes. Americans should be allowed to purchase full-sized trucks and SUVs with frames that impose additional risk on other drivers. However they should pay higher insurance rates because of those risks.

Response: E.

Large vehicles' wasted fuel and higher emissions are contagious. Large vehicles on the road frighten some drivers into buying larger vehicles than they otherwise would to avoid being injured in an accident. This is a vicious cycle of waste.

Response: E.

2-09 Jamie Hall, John Boesel; California Secure Transportation Energy Partnership (CalSTEP); California Secure Transportation, Energy Partnership (CalSTEP); CALSTART

P1, ¶¶1, 2, 3: Introductory and supportive comments, including background information and explanation of benefits of verified mileage programs, discounts for verified mileage programs, third-party verification, technological verification, PAYD, and price per mile programs. The comment also encourages privacy safeguards regarding technological verification.

Response: A + U.

P1, ¶4: "We encourage the Department to revisit the issue of mileage bands for usage based insurance programs that are not on a 'price per mile' basis."

Response: K.

P1, ¶4: The mileage bands in the proposed draft regulations are not narrow enough to properly link miles driven to premium paid.

Response: B + K.

P1, ¶5: Incentives alone may not be sufficient to entice insurers to offer this program.

Response: B + O + V.

P2: Combining miles with other rating factors dilutes the benefits of PAYD.

Response: A + H

P2: Wide bands and combining optional rating factors allows insurers to market as "PAYD" policies with premium only loosely related to miles driven.

Response: H + K

2-10   Janice A. Dougall

Sec. 2632.5 Rating Factors
(c) (2) (F) 1. Actual mileage pursuant to this subdivision must be verified either:
Comment: The numbering system in the list following this changes mid-list.
For example, the item "4. by odometer readings reported to the insurer by the insured or by an agent of the insured." Should begin "(iv) 4" to be consistent, although double-numbering in this way may not be necessary.

Response: F. These items are correctly numbered in the final version of the regulation.

(c)2 (F) 1(ii) 2. through service records from by odometer readings recorded by an automotive repair dealer, as defined by section 9880.1 of the Business and Professions Code, in the ordinary course of the business of servicing a vehicle, provided to the insurer by the policyholder pursuant to subdivision (D)(1); or ~~or~~ by a vendor retained by the insurer.
Comment: Omit unnecessary word "or".

Response: F. This correction has been made.

(c)2 (F) 5 -
5. through the use of by a technological devices provided to the insured pursuant to subdivision (D)(2) section (c)(2)(D). A technological device shall not be used to collect information about the location of the insured vehicle. Information collected by a technological device shall only be used to calculate ~~automobile insurance rates.~~ mileage.
Comment: As worded with "automobile insurance rates," the technological device could be used to calculate other factors in rate calculations, such as speed driven to determine whether the driver is a safe driver. By changing the wording to "mileage" the technological devices will be limited to collecting that data.

Response: F. This section has been completely reworded in a way that incorporates this concept.

3. (iii) An insurer employing verified actual mileage pursuant to this subdivision may provide a discount to a policyholder reflecting any cost savings or increased actuarial accuracy associated with obtaining and using actual mileage rather than estimated mileage. An insurer that offers both a mileage estimation program and a verified actual mileage program may provide a discount to a policyholder who participates in a verified actual mileage program.

Comment: The second sentence was missing a subject. Complete with "An insurer" or another subject.

Response: F. This grammatical infirmity does not exist in the final version of the regulation.

4. (iv) If an insurer offers both an estimated mileage program and a verified actual mileage program, participation ~~Participation~~ by a policyholder in a program to determine actual mileage shall be voluntary. An insurer offering an estimated mileage program shall not require a ~~any~~ policyholder to participate in a program to provide verified actual mileage.
Comment: Omit duplicated word "Participation." Omit unnecessary word "any."

Response: F. This grammatical infirmity does not exist in the final version of the regulation.

(vi) The insurer ~~may give~~ shall offer the insured credit for unused purchased miles through a refund or a premium offset on a renewed policy.
Comment: As a part of the section on the characteristics of a Price per Mile Option, there should be every attempt to charge the actual price per mile, and not allow charges based on high estimates.

Response: T. This comment, on the price per mile provisions is no longer relevant because the entire price per mile section has been removed and replaced with a simpler provision.

~~(ix) An insurer is not required to charge the same price for every mile purchased.~~
Comment: This deserves deletion or some explanation that would eliminate my fear. My fear is that there would be a "come on" price for first miles followed by ballooning prices for later miles. An explanation that could be added instead of deleting the clause could be something like "as described in section xi, 1." Or move the statement ", if the insurer establishes an actuarial basis for such differential pricing and the Commissioner approves the differential pricing in the insurer's rate or class plan application" **from xi, 1 to the end of this sentence.**

Response: T. This comment, on the price per mile provisions is no longer relevant because the entire price per mile section has been removed and replaced with a simpler provision.

2-11 Janine Gibford; American Insurance Association

P1 ¶ 1: Summary of AIA operations

Response: U.

P1 ¶2: Support of regulation with a question about 2632.2 (c)(2)(F)(i)(5)

Response: A.

P1 ¶3-4: Believes that restricting the technological device to miles driven only is prohibitive and that where the miles are driven is just as important as the number of miles. The more a car is on the road the more chances it has at being in an accident. The same goes for location.

Response: B + M.1 + M.2 + M.3 + X.

P1¶5-P2: Not allowing location to be considered will expose those that drive in less populated areas and have less exposure to two car accidents to underwrite those that live in more densely populated areas that have a higher risk, Also cars in more densely populated areas sit and idle more, releasing more CO2 and CO into the atmosphere.

Response: B + M.1 + M.2 + M.3 + X.

2-12 Justin Horner and Victoria Rome, Natural Resources Defense Council

P1, ¶¶1-2: The National Resources Defense Council ("NRDC") submitted comments on behalf of its 1.2 million members, including 214,000 members who are Californians. The NRDC co-sponsored legislation and continues to support methods to reduce global warming, including vehicle emissions. The California Energy Commission has predicted that the progress made in reducing carbon gasses in California could be offset by increases in miles traveled.

Response: A + U.

P1, ¶¶3-4 and P2, ¶1: While the NRDC submitted comments in October of 2008 (attached as Exhibit A to this comment) in support of the PAYD regulations and generally supports the Commissioner's policy goal of reducing greenhouse gas emissions, the latest proposed revisions do not entirely address the NRDC's concerns. They also raise questions about the extent to which PAYD will available and capable of playing a real role in helping to stem the threat of global warming, the effects of which are already being felt.

Response: G + U.

P2, ¶2: Because the PAYD regulations merely permit, rather than require, insurers to offer a PAYD product to their customers, it is an open question whether the PAYD regulations will be offered to a sufficient number of California drivers to have a real impact on greenhouse gasses. Therefore, NRDC recommends that insurers be required to offer PAYD.

Response: B + O.

P2, ¶¶ 3-6: The PAYD regulations have two primary incentives: 1) to give insurers the option of providing a discount to customers who participate in a verified mileage program and 2) to permit insurers that use a verified mileage program to combine the second mandatory rating factor with five optional factors. The NRDC is not aware of any analysis that would demonstrate these incentives will push the market towards widespread PAYD use and reduced pollution through reductions in miles driven. Before adopting the PAYD regulations, the CDI should conduct a public economic analysis to determine the extent to which these incentives will result in significant PAYD market penetration.

Response: B + E + J + V

P3, ¶¶ 1-4: Comments from the insurance industry evinced a strong desire for the Commissioner to permit insurers to combine the second mandatory factor with gender, marital status, percentage of use, academic standard and driver training. Thus, insurers appear to believe that the ability to combine these factors with mileage will encourage insurers to implement a PAYD program. The NRDC, however, is concerned that combining optional factors with mileage will dilute the relationship between the number of miles driven and the price of premium. Proposition 103 recognizes a clear correlation between miles driven and the risk of an accident. Pilot projects demonstrate that drivers reduce their mileage once they understand that there is a correlation between the number of miles driven and the price of those drivers' premium. Before adopting the PAYD regulations, the CDI should publicly study the consequences of combining optional rating factors with mileage and analyze the affect such combinations will have on a drivers' risk of accident, the number of miles driven and actuarial accuracy.

Response: H + M.1

P3, ¶5 through P4, ¶1: The NRDC commends the CDI's mileage band requirement, but the 2000 mile bands proposed by the CDI are used by some insurers already and do not have a demonstrable impact on premiums or miles driven. Minimum mileage band boundaries must be defined in a way that will provide a strong price signal to drivers. NRDC recommends mileage bands no smaller than 100 miles and no greater than 500 miles.

Response: B + K.

P4, ¶2: The issue of permitting variations on premium charge due to "quality of miles" parameters such as braking and acceleration and deceleration should be part of a separate rulemaking and NRDC supports the CDI's decision to avoid making those issues part of the PAYD regulations.

Response: A + M.1

P4, ¶3-5: While the NRDC commends the CDI for excluding Global Positioning Systems from the scope of the regulations, the PAYD regulations would permit companies to require drivers to accept a technological device in their vehicles as a condition precedent to participation in a mileage verification program. To the extent that the PAYD regulations permit insurers to make a technological device a requirement, NRDC believes such a requirement is unnecessary and opposes the rule because of the privacy concerns related to installation of such a device as well as the risk that the requirement may hamper driver participation in a mileage verification program. The NRDC, therefore, recommends a revision to the regulations to require insurers to offer a non-technological mileage verification option to drivers.

Response: F + N.9 + N.10 + N.20.

P5, ¶1-3: The NRDC welcomes the inclusion of a price per mile option within the PAYD regulations. This option will create a clear correlation between a driver's premium cost and the mileage driven by that person. Because there are outstanding questions about the compatibility of such a program with the requirements of Proposition 103, NRDC encourages the CDI to work closely with insurers, consumer advocates and other members of the public to ensure that the price per mile option will comply with Proposition 103. NRDC also has questions about insurers' ability to charge different rates for each mile purchased, and believes that drivers should pay an amount for a price per mile option that is as consistent as possible across insurance companies so that this option will have the greatest impact upon driver behavior.

Response: N.9 + N.20 + T.

2-13 Kamal Hassan; Skymeter Corp.

The commenter supports privacy rights but contends that the proposed language regarding the collection and use of location information is overly broad and would curtail many beneficial uses. The commenter offers suggested language.

Response: A + F + N.20. The Commissioner lacks authority to regulate use of technological devices in connection with services provided by those not regulated by the Department, such as emergency service personnel, and the scope of the regulations does not extend to those not regulated by the Department. California Insurance Code Section 1861.02 does not allow for a system whereby a policyholder would receive free insurance in exchange for receiving advertisements when driving.

2-14 Keeshu-Lu Mitra; State Farm Insurance Companies

P1 ¶1: Applauds the CDI effort to improve reliability of the second mandatory rating factor, e.g., actual v. estimated mileage.

Response: A + G.

P1¶2: The proposed changes more closely match price to risk as well as environmental benefits and reduced traffic congestion.

Response: A + G.

P1¶3: There is potential relationship between PAYD and the first mandatory rating factor. The commenter is requesting that additional rating factors be allowed.

Response: B + M.1.

P2¶1-2: Not all miles driven are equal. In order to allow consumers to benefit additional factors should be allowed. These include time of day, day of week, type of road, where miles are driven, sped interval, number of miles per trip, number of aggressive maneuvers (hard stops, starts, and turns). The regulations should recognize that two similarly situated drivers may present different risks and should therefore be treated differently. The CDI have been provided studies that verify the above and should allow consumers with a choice of benefits.

Response: B + M.1.

P2¶3: The language of CCR Sec 2632.5(F)(i)(5) limits the use of electronic devices (OnStar, Ford Sync) that provide engine alerts, emergency calls, towing services etc.

Response: G + U + N.20.

The commenter provides the below language:

> *by a technological device ~~provided to the insured~~ pursuant to ~~subdivision (D)(2)~~ section (c)(2)(D). A technological device shall not be used to collect information about the location of the insured vehicle for the purpose of assigning the policy to e frequency or severity band. ~~Information collected by a technological device shall only be used to calculate automobile insurance rates.~~*

Response: B + N.20.

P2¶4: Because it can enhance auto insurance rating the commenter believes that there should be no limitations on the collection of location data.

Response: B + M.1 + N.20.

P3¶1: Section 2632.5(F)(iii)Commenter requests that if an insurer can actuarially support it that there should be tiered discounts depending on the verification method used to capture mileage.

Response: F + V.

P3¶2: Section 2632.5(F)(vi) The mileage bands are arbitrary and should be removed. They lessen consumer choice and lessen competition. Companies should be allowed to determine mileage bands.

Response: F + K.

P3¶3: Section 2632.5(F)(vii) Commenter request that insurers that employ the verified actual mileage option should be allowed to combine the second mandatory rating factor with any other allowed rating factor, mandatory or optional. The commenter provides the below language:

> *An insurer employing verified actual mileage pursuant to (c)(2)(F) may combine rating factors allowed in sections (c)and (d) with the Secondary Mandatory Rating Factor. If an insurer elects to combine the Secondary mandatory Rating Factor with another rating factor as provided in section (c)(2)(F), the insurer shall demonstrate in its class plan that*

the rating factors used in combination, when considered individually, comply with the weighing ordering requirements of Section 2632.8

Response: F + H.

P3/4¶4: Thanks the CDI for pushing forward with innovations that will benefit consumers and stir competition while dealing with the constraints of Prop. 103.

2-15 Lauren Navarro; Environmental Defense Fund

P1, ¶¶1-2: The Environmental Defense Fund ("EDF") expresses its support for the PAYD regulations, in particular, the CDI's incorporation of EDF's suggestions to expand third-party verification options and to permit insurers to exclusively offer PAYD programs. The EDF also supports mile-by-mile insurance and wants to increase the availability of such programs.

Response: A + U.

P1, ¶3 Attached documents titled: "Bringing Pay As You Drive Insurance Programs to California" and "Large-Scale Implementation of Pay-As-You-Drive Insurance Can Save Billions": The PAYD regulations rely too heavily on voluntary implementation of PAYD through insurer incentives as a means for furthering the widespread adoption of the program. Studies including those referenced in the attachments to EDF's comments demonstrate a direct relationship between the extent to which insurers adopt PAYD programs and the extent to which insurers save more money in the implementation of the program. The same correlation exists between the extent to which PAYD programs have been adopted and the amount of interest in the program.

Response: O + V.

The use of incentives alone as a means to increase market penetration of PAYD programs has had little success in other states, and there is no evidence to the contrary. The documents attached to the EDF's comments purport to demonstrate that mileage-based PAYD programs must be mandatory in California in order to cut insurer costs, bring savings to low, moderate and some high-income households, and have a significant effect on the reduction of carbon dioxide gas emissions. Full implementation of a mandatory PAYD insurance program can save between $4 and $8.1 billion in accident costs each year.

Response: O + V.

According to EDF's review of a study by the Brookings Institution, even slightly less than full implementation of a PAYD program results in participating insurers taking on significantly more risk than their competitors and consequently results in a considerable reduction of cost savings. While the fact sheet notes that the state could finance the insurer research, policy development and equipment costs for implementation of PAYD to further stimulate the use of PAYD programs, the EDF also acknowledges the challenge in obtaining such financing given the current economic climate.

Response: G + U. Regarding the proposed research: B + E + J.

P1, ¶4 through P2, ¶¶1-2: The mileage bands of 0-3,999 and the six mileage bands between 4,000 and 15,999 are not small enough to affect the mileage driven by a given customer. The CDI should create mileage bands that are no greater than 500 miles per band. The CDI should also ensure that the weights assigned to the various mileage bands are sufficiently heavy enough to significantly affect the customer's premium charge, thereby influencing consumer driving behavior.

Response: B + K.

P2, ¶2: Greenhouse gas emissions, insurance costs and the risk of an accident are best reduced by improving the influence of mileage on premium. Companies that offer mileage bands below 101 miles, or implement a mile-by-mile insurance program should be given special financial and regulatory incentives to reward the companies. By way of example, the CDI should only permit companies that utilize these stringent standards to use advertising labels such as "green," "environmental" or "mileage-based" when advertising these programs.

Response: B + E + J + K.

P2, ¶ 3: The EDF fact sheet, attached to EDF's comments, demonstrates that monitoring the number of miles driven results in reduced accidents. PAYD benefits are also factors that are within a driver's control. Thus, PAYD benefits bear a relationship to the risk of loss. The CDI should require all companies to offer PAYD programs to their customers, and closely monitor and regulate the attractiveness and quality of the PAYD programs offered by companies. The CDI should also consider the regulatory, financial and marketing lessons learned in other states so that the CDI may revisit its PAYD regulatory framework in the next few years.

Response: B + O.

P2, ¶4: The EDF supports the use of technology to aid market penetration of PAYD programs. The regulation should be clarified, however, to allow for the voluntary use of technology such as Global Positioning Systems in a way that does not disclose a consumer's location to the insurer. For example, premiums might be calculated using location-anonymous pricing so that technology used by insurers does not retain any memory of the driver's location and does not associate location data with particular drivers or vehicles.

Response: N.20.

P4, ¶5: While proposed section 2632.5 (c)(2)(F)(i)(5) is a good first step in addressing privacy concerns raised by the use of technology, the CDI should adopt stringent privacy safeguards for all technologies to destroy sensitive data and to protect consumers against data disclosure. The CDI should adopt safeguards that still permit companies to retain data for audit purposes. For companies offering technology-based programs, the CDI should consider requiring such companies to offer at least one other verification option so long as that option does not result in hardship to the company.

Response: D + F + O.

P5, ¶1: The EDF generally applauds the CDI's effort to introduce a PAYD program. The EDF also urges the CDI to consider revisiting voluntary "quality of miles" programs in a future rulemaking proceeding.

Response: A + G + U.

2-16 Randolph M. Holmes and Frederick T. Blumer; Hughes Telematics

P1, ¶¶1 and 2: Introductory comments

Response: U.

P1, ¶ 3 – P3, ¶4: Regarding the collection and use of location information, the proposed regulation language is overly limiting because it disallows many described beneficial uses. The commenter offers suggested language.

Response: F + S. The Department lacks authority to regulate companies such as OnStar, and the regulations do not purport to do so.

2-17 Robert W. Peterson; Santa Clara University, Institute of Insurance Law and Regulation (Comment Dated July 7, 2009)

P.1, ¶1: The "Price Per Mile" option includes set time periods for liability coverage. This seems a good solution to the public policy issues involved in a system in which cars driven over the purchased additional miles become uninsured.

Response: A.

P.1, ¶2 – P2, ¶3: "Price Per Mile" option two should be eliminated. Notice given at the time of policy purchase is not effective notice. Many cars are driven by family members, perhaps away at school, who may not be aware of the number of miles purchased. A windshield sticker may not always be consulted, and the consequent loss of coverage is very significant. A consumer may be conscientious in monitoring miles, but still miss the expiration date. This option is not in the best public interest, is impractical, and should be eliminated.

Response: T.

P.2, ¶4 - 5: In the technological device section, prohibiting gathering information about location satisfies some privacy concerns, but the language may allow insurers to gather other information. The language regarding using information to calculate automobile insurance rates would allow for collection of acceleration and deceleration information. If the regulation is open to this interpretation, that fact should be clear. If this is not the intended interpretation, the language should be amended to the effect of information collected by a technological device shall be used only to calculate miles driven. No information other than miles driven shall be collected or used by an insurer.

Response: F + M.1 + N.20.

P.2, ¶6: Under the current language, it is unclear whether information obtained by means of a technological device can be used in a civil or criminal case where the device is offered to prove the speed of the car at the time of a collision. Limiting the prohibition to insurers and insurance rates would remove any argument that this particular regulation is intended to extend into any other sphere.

Response: F + N.20 + S.

P.3, ¶1: Offering more ways to verify mileage is appreciated. However, it may be unclear as to what is available to the policyholder and what may be required by the insurer. May the policyholder choose, or may the insurer choose? If the insurer chooses, the choice may be buried in the policy so the policyholder will not realize there is only one choice available until the time for verification. Related comments provided earlier are referenced. Automobile dealers may be glad to pay a fee to an insurer who sends policyholders to them for verification, hoping to sell them other products or services.

Response: D + F + N.9 + T.

P.3, ¶2: The language "in the ordinary course of the business of servicing the vehicle" suggests that the policyholder, rather than the insurer, may choose any of the methods listed because a policyholder may not go to a dealer for service in the ordinary course of business.

Response: D.

P.3, ¶3: The language "regardless of the method of verification used" seems to imply that the method of verification is at the option of the insured. The regulation should clarify exactly who may pick what options for verification.

Response: D + F.

P.3, ¶4: The language regarding an objectively-dated photograph allows for changing the date in advance of taking the photograph.

Response: F + T.

P.3, ¶5: The language in subsection (G)(v)(2) duplicates a method allowed in (i)(4).

Response: F + T.

P.3, ¶6: The mileage band language in section (F)(vi) is an improvement. However, if a mileage band is 2,000 miles, should an insured driving one mile into the next rating band pay the same as someone driving 2,000 miles into the next rating band. This undermines the policy of discouraging unnecessary driving. A linear system with different premiums per mile would be preferable.

Response: K.

P.4, ¶1: Section (G)(vi) provides that the insurer may give the insured credit for unused purchased miles through a refund or a premium offset on a renewed policy. Does this apply only to Price-Per-Mile? Why is the insurer not required to provide credit? Section (F)(4) allows the insurer retroactively or prospectively to adjust premiums based on actual miles driven. If the insurer increases premium if the insured goes over the purchased miles, the insurer must give a credit or refund if the insured drives fewer than the purchased miles. How is this to be calculated? Is it linear, or does it depend on the band into which the insured falls? What are the consequences of crossing the next band, but by only 100 miles?

Response: T. Section (G)(vi), applicable to the Price-Per-Mile option was subsequently deleted. A. The calculation will be as set forth in an insurer's approved class plan.

2-18 Russina Sgoureva; Farmers Insurance Group

P1, ¶1-2: Appreciates the opportunity to comment on the changes to the regulations. 2632.5(c)(2)(E) limiting mileage verification to smog check stations does not capture mileage for cars that are less than 6 years old and cars that were made before 1976. Request the language be broadened.

The commenter provides the below language:

> An insurer may obtain and use smog check odometer reading from the California Bureau of Automotive Repair or other governmental agency.

Response: D + F.

P1, ¶3: Request that the same language be added to subsection 2632.5(c)(2)(F)(iii)

Response: D + F.

P1, ¶4: 2632.5(c)(2)(F)(iii) the commenter requests that depending on the verification method used, tiered discounts be allowed in the verified mileage program.

Response: F + V.

P1, ¶5–P2, ¶1: 2632.5(c)(2)(F)(v) commenter requests that marketing the mileage verification be optional to Statutory non-Good Drivers.

Response: F. The referenced marketing requirement has been removed.

P2, ¶1: Believes that 2632.5(c)(2)(F)(v) will limit pilot programs to allow testing of new technology and validate that it is working correctly.

Response: I. The referenced marketing requirement has been removed.

P2, ¶2: Believes that there would be a conflict with the Price Per Mile Provisions and recommend that the last sentence of 2632.5(c)(2)(F)(v) be removed.

Response: B + I. The referenced marketing requirement has been removed.

P2, ¶3: 2632.5(c)(2)(F)(vi) commenter requests the removal of the suggested mileage band or include a requirement that insurers use a certain minimum number of mileage bands in their class plans. This will promote innovation and ensure that the bands chosen will best fit the insurers use.

Response: F + K.

P2, ¶4: 2632.5(c)(2)(F) (vii) commenter requests that both verified and non-verified mileage be combined with the optional rating factors and that the combinations are allowed with all of the mandatory or optional rating factors.

Response: B + H.

P2, ¶5: 2632.5(c)(2)(G) implementing a Price Per Mile (PPM) option will require that insurers make an investment in a technology based approach to mileage verification. This would be needed to ensure that coverage exists when making a claim.

Response: T.

P3, ¶1: 2632.5(c)(2)(F)(v) would have to be modified to eliminate a conflict if insurers have to offer all mileage verification methods. In some cases technology could preclude an insurer from offering a PPM to every insured.

Response: D + T.

P3, ¶2/3: 2632.5(c)(2)(G) should specify that an insured must participate in a verified mileage program to use PPM.

Response: T. This provision (G) has been eliminated.

P3, ¶4: 2632.5(c)(2)(G)(ii) with the differences in Liability portion (set time) and all other coverage under PPM insurers will see a significant increase in cost to implement all of the changes. There is no incentive to the insurers to help cover these new costs.

Response: T. This provision (G) has been eliminated.

P3, ¶5: 2632.5(c)(2)(G)(ii) how does PPM apply to lien holders? Also will lien holders accept a PPM policy.

Response: T. This provision (G) has been eliminated.

P3, ¶6: Recommends that the CDI allow insurers the option to drop Liability coverage to the minimum if the PPM block of miles expires.

Response: T. This provision (G) has been eliminated.

P3, ¶7: Recommends that when an insured adds mile after a gap in coverage that the policy be applied on a prospective basis only.

Response: T. This provision (G) has been eliminated.

P4, ¶1: 2632.5(c)(2)(G)(xi) clarify that an insurer can have the right to cancel a policy if an insurer refuses to report mileage.

Response: T. This provision (G) has been eliminated.

P4, ¶2/3: 2632.5(c)(2)(G)(xi)(2) because policies can be purchased electronically, mandating a paper form is no longer necessary.

Response: T. This provision (G) has been eliminated.

The commenter provides the below language:

> *Such notices shall be effective if the insured agrees in writing, or in the same format as a policy is being purchased, at the time of the purchase of the policy*

Response: T. This provision (G) has been eliminated.

P4, ¶4/5: 2632.5(c)(2)(G)(xi)(3) there is no incentive for an insured to report mileage has expired when "free" insurance will be provided for 20 or 30 days after an insurer has sent out a notice on renewal or nonrenewal. Requests that an insurer be allowed to send a notice of cancellation or nonrenewal when an agreed upon pre-determined minimum number of miles is met. If additional miles are not purchased then the policy will expire after 30 days.

Response: T. This provision (G) has been eliminated.

P4, ¶6: 2632.5(c)(2)(H) Request that guidelines be clarified for class when addressing the new PAYD regulations.

Response: B + E + Q.

P4, ¶7: 2632.5(c)(2)(I) requests that an insurer can require an applicant to provide prior mileage information. This can be obtained from the applicant's prior insurer.

Response: B + E + Q.

2-19 Sharlene Leurig; Ceres

P1, ¶¶1 and 2: Introductory and supportive comments

Response: U.

P1, ¶3 and P2, ¶1: The comment criticizes the voluntary nature of the proposed regulations and advocates a mandatory program. The Department should either ease market entry or "mandate insurers to offer mileage-based payment options for insurance."

Response: O. To the extent market-entry requirements are statutory (such as the seasoning requirement of section 716), the Commissioner cannot change them by regulation. California Insurance Code Section 1861.02 requires that annual miles driven be the second mandatory factor in setting automobile insurance rates and premiums. Therefore, California does not offer an "all-you-can-drive" system. As indicated elsewhere in the rulemaking file, for the reasons stated, the Commissioner has determined to incentivize, but not to mandate, a pay-as-you-drive system.

P2, ¶¶2 and 3: Mileage bands should more accurately reflect the actuarial relationship between miles driven and loss claims. Insurers have too much discretion to construct mileage bands which fail to incentivize drivers to reduce their miles driven. The Department "should not permit mileage bands to exceed 500 miles when mileage is verified, nor should the upper bound of the lowest mileage band be greater than 1,000-2,500 miles nor the top mileage band be less than 20,000 or 24,000 miles (as opposed to the proposed 16,000 miles). Similarly, while the regulations should require insureds to purchase a minimum number of miles, the Department should stipulate the permissible minimum miles an insurer can require."

Response: K.

P3, ¶1: Different price per mile or different price per mileage bands should be actuarially justified by the loss data. Also, regulations should forbid miles to be priced in such a way that encourages drivers to purchase more miles than they actually use.

Response: K + T.

P3, ¶2: Regulations should disallow optional rating factors such as "Percent Use, Academic Standing, Gender, and Marital Status" because they have no actuarially proven correlation to loss and because programs marketed as PAYD will still rely heavily on these unproven factors.

Response: E + Q. California Insurance Code Section 1861.02 provides that annual miles driven is the second mandatory rating factor. The Commissioner may adopt optional factors by regulation which have a substantial relationship to risk of loss, and the Commissioner has already adopted Percent Use, Academic Standing, Gender, and Marital Status, which were found to bear a substantial relationship to risk of loss. Disallowing those optional rating factors is beyond the scope of this rulemaking proceeding.

2-20 Sam Sorich and Mark Sektnan; Association of California Insurance Companies (ACIC)

P.1, ¶1 - 2: ACIC supports CDI's effort to create an optional verified mileage program and appreciates CDI's positive response to earlier comments. However, additional changes are needed. Some aspects of the proposed regulations are unnecessarily prescriptive. Insurers must have flexibility, which should be the guiding principle.

Response: U.

P.1, ¶3: An insurer providing coverage for more than one car on a policy may encounter rating and administrative difficulties if one car is priced based on estimated mileage and another car is priced based on verified mileage. The regulations should allow an insurer to require that all cars covered by a single policy must be included in the same mileage program. Suggested language is provided.

Response: F.

P.2, ¶1 - 2: Section 2632.5(c)(2)(F)(i)(5) regarding use of technological devices is too restrictive. It could be interpreted to require that the technological device must be provided by the insurer, even though many vehicles already have such devices.

Response: B + D + N.20.

The regulation should not dictate what information technological devices may collect, except to the extent it relates to what information may be used for rating purposes.

Response: D + F + N.20.

P.2, ¶3, P.3, ¶1: Section 2632.5(c)(2)(F)(iii) could be interpreted to mean that all policyholders in the verified mileage program must be given the same discount, which is contrary to the goal of encouraging drivers to drive less.

Response: F + V.

P.2, ¶4, P.3, ¶1: The implication of section 2632.5(c)(2)(F)(iii)is that both estimated and verified mileage programs may be included in one class plan. This should be expressly stated.

Response: F.

P.3, ¶2: In section 2632.5(c)(2)(F)(v), it is appropriate to require an insurer to make all verification methods available to all insureds. However, CDI does not have authority to determine how an insurer markets its programs.

Response: D + F.

P.3, ¶3: The mileage bands set forth in section 2632.5(c)(2)(F)(vi) are arbitrary. Insurers should be encouraged to develop their own mileage bands. The mileage band requirement would discourage insurers from participating in the verified mileage band program.

Response: K + F.

P.3, ¶4: Further changes should be made in connection with authorizing combining of rating factors in section 2632.5(c)(2)(F)(vii).

Response: H + V.

Page 4, ¶1: The authorized combining of rating factors should not be confined to the verified mileage program. The reasons for combining factors are as valid for estimated mileage as for verified mileage.

Response: B + H. The Commissioner has determined to authorize the combining of rating factors for the verified mileage program to provide an incentive for insurers to offer such a program.

P.4, ¶2: The second mandatory factor is allowed to be combined only with five specified optional factors. No evidence is presented to justify this limitation. Insurers should be allowed to recognize interactions between factors (except for territory) as long as a substantial relationship to the risk of loss is demonstrated.

Response: B + E + H.

P.4, ¶3: The phrase – "the insurer shall demonstrate in its class plan that the rating factors used in combination, when considered individually, comply with the weight ordering requirements of Section 2632.8" – should be deleted. It is the same as currently included in Section 2632.5(e), and eliminates the ability to consider the combination of a mandatory rating factor with an optional factor as weight to the optional factor.

Response: B + E + H. This language was included to be consistent with section 2632.5(e) and to ensure compliance with California Insurance Code Section 1861.02(a).

P.4, ¶4: Section 2632.5(c)(2)(F)(vii) should be deleted. Section 2632.5(e) should be revised to allow the three mandatory factors to be combined with any other optional factor, except claims frequency and claims severity. No optional factor may yield a weight that is higher than the third mandatory factor.

Response: B + E + H.

P.4, ¶5: Section 2632.5(c)(2)(F)(vii) should be amended to include Years of Driving Experience in the factors that may be combined with Miles Driven. Recognition of the interaction between Years of Driving Experience and Miles Driven will improve the regulations' potential to produce premiums that reflect the risk of loss.

Response: E + H.

P.4, ¶6: In Section 2632.5(c)(92)(G)(viii), insurers should be allowed to design methods for reporting odometer readings that attract customers.

Response: D. This provision (G) has been eliminated.

P.5, ¶1: Suggested language is provided for Section 2632.5(c)(2)(G)(viii).

Response: F. This provision (G) has been eliminated.

Page 5, ¶2: In Section 2632.5(c)(2)(G)(v)2, it should be made clear that an insured may be required to report odometer readings to the insurer, agent, or a vendor.

Response: D. This provision (G) has been eliminated.

P.5, ¶3 - 4: Section 2632.5(c)(2)(G)(xi)1 and 2 interpret the renewal and nonrenewal notice requirements of California Insurance Code Section 663, but the CDI cannot do so in the context of auto rating factor regulations. Additionally, the subjections would create special renewal notice rules applicable only to the verified mileage program. But renewal laws should be applied uniformly.

Response: This provision (G) has been eliminated.

P.5, ¶5 – 6, P.6, ¶1: The verified mileage program will require insurers to undertake additional expenses. The prior approval efficiency standard creates a disincentive for an insurer to offer the verified mileage program and undertake the additional expenses. Because the efficiency standard is a three-year average, there is an inherent delay in an insurer's ability to reflect the additional verified mileage expenses in its rates. CDI should adopt a new efficiency standard variance that recognizes the expenses related to the verified mileage program.

Response: B + E + W. Although the comment alleges an insurer will incur additional expenses if it adopts a verified actual mileage program, no quantification or other information confirming that statement is provided. For example, an insurer can verify mileage by odometer readings reported to the insurer by the insured. Likewise, in an estimated mileage program, an insurer may require an insured to provide the vehicle's current odometer reading. Receiving a report of an odometer reading is not necessarily more expensive in a verified mileage program than in an estimated mileage program. And no information was provided to support that conclusion.

Additionally, an insurer's expenses may not be impacted by the efficiency standard at all. Adopting a variance to the efficiency standard is outside the scope of this rulemaking proceeding, and the Commissioner declines to do so.

P.6, ¶2 - 3: To achieve the full potential of pay-as-you-drive, CDI should adopt new optional rating factors that consider driving characteristics such as when and how a car is driven. A 2008 Brooking Institute report concluded that to achieve the goal of equity in insurance pricing, more than just the total miles driven must be considered. Other factors that contribute to accident risk, such as speed, time of day, and aggressiveness, should be incorporated.

Response: B + E + M.1.

2-21 Todd Foreman, Pamela Pressley and Carmen Balber; Consumer Watchdog

P1, ¶¶1-4: Consumer Watchdog (CWD) incorporates all of its previous comments by reference and points out that Proposition 103 uniquely positions the commissioner to more closely tie premiums to annual miles driven. CWD supports aggressive implementation of the second mandatory factor.

Response: U.

P1, ¶5: CWD supports strict standards including maximum mileage rating bands.

Response: B + K.

CWD supports creation of an "Environmental Seal of Approval" for insurers that provide environmentally outstanding products

Response: B + E + J.

CWD supports requiring insurers to widely publish their rating factors for each mileage band to enable drivers to see how much they save by reducing their miles.

Response: B + E + J.

P2, ¶¶1-2: The best way to achieve a viable pay per mile system is to establish a limited working group of experts to propose a system that would be presented to the broader public through a "fully noticed public process."

Response: B + E + J + BB.

However the June 24 amendments would allow programs that conflict with the auto rating factor regulations, unfairly discriminate against certain drivers, lack real standards for 'pay-as-you-drive' policies, threaten driver privacy, and "segment driver population so only the desirable few targeted by insurers may be eligible for undefined 'discounts.'"

Response: U.

P2, ¶3 : Specific shortcomings of the june 24 amendments include the following:

(i) Fail to set standards for insurers to follow in implementing “pay-as-you-drive”or mileage-based insurance;
(ii) Fail to provide incentives for drivers to drive less;
(iii) Allow insurance companies to invade driver privacy as a condition of receiving a discount;
(iv) Violate Proposition 103’s ban on unfair discrimination that requires similarly situated drivers to pay the same premium if they drive the same mileage;
(v) Introduce a Price Per Mile Option with no analysis of how it would work, whether it could work fairly, or whether it complies with the weighting requirements for mileage or the other mandatory rating factors under Proposition 103;
(vi) Create tools and incentives for insurance companies to cherry-pick desirable drivers and exclude others from mileage savings;
(vii) Undermine or override number of miles driven annually as the second-most important rating factor under Proposition 103; and
(viii) Contain vague and confusing language that must be clarified before the amendments are adopted.

Response: G + U.

The regulation gives all the choices to the insurance companies. Bridled innovation in product offerings in the mortgage-backed securities market has demonstrated the failure of this insurer-take-all approach. This is the opposite of the intent of Proposition 103

Response: G + U.

The Department has a duty to identify the specific purpose and effect of allowing new or innovative insurance products. But the regulations require significant modification to achieve this.

Response: G + U.

Price per mile option: the department must evaluate such proposals since the current sequential analysis approach will be useless with regard to insurance sold on a per mile basis?

Response: G + U.

P3, ¶¶2-3: CWD is willing to discuss ways to craft a viable pay-as-you-drive solutions with the department. The regulation does not move the California closer to adopting effective pay-as-you-drive policies, will not meaningfully save motorists money by driving less and has no meaningful environmental benefits.

Response: G + U.

P3, ¶4 to P5 I. The Department must provide the full notice period and hold a public hearing for such substantive changes to the proposed regulation.

The newly added sections 2632.5(c)(2)(G) (price per mile option) and 2632.5(c)(2)(F)(vii) (combining optional rating factors with the second mandatory factor) are too major to reasonably expect the public to be able to do a complete and thorough analysis on the 15 day notice period that included a holiday weekend. Further, the June 24, 2009 proposed amendments do not comply with Government Code section 11346.8 because sections 2632.5(c)(2)(G) are and 2632.5(c)(2)(F)(vii) are substantially different from the initial proposed regulation and don't fit within the any of the exceptions that would allow these changes to be made on a 15 day notice.

The changes don’t fall within the first exception of Government Code section 11346.8 because they are not "solely grammatical in nature." The amendment also fails to meet the second exception because they are not sufficiently related to the original text to adequately place the public on notice that the change could result from the originally proposed action.

The Notice of Proposed Rulemaking is irrelevant in determining whether the public was adequately placed on notice of sections 2632.5(c)(2)(G) are and 2632.5(c)(2)(F)(vii) because the determination must be made based on the text of the original proposal.

The text of the original proposal dealt solely with mileage verification -- to permit insurers to verify miles. The June 24 amendments go beyond this in the following ways: by creating a new pay per mile system (2632.5(c)(2)(G)(x)), changes the way insurers can offer nonliability auto coverage (2632.5(c)(2)(G)(x)(2)) and alters the way insurers can apply the second mandatory rating factor (2632.5(c)(2)(F)(vii)). These changes must be issued for a full public notice period and should include a public hearing and probably a public workshop to work through the details of the "sweeping proposals." The large number of unanswered questions discussed below shows the need for this additional time.

Response: To the extent these comments refer to Section G of the regulation, they are no longer relevant because section G has been removed. With regard to the changes to CCR 2632.5(c)(2)(F)(**viii**) [in the earlier draft: 2632.5(c)(2)(F)(**vii**)], See Responses H and BB.

PP 5-6: II. The Regulations Fail to Protect Driver Privacy

The June 24 proposal allows insurance companies to:

- Require the use of technology to participate in a mileage verification/ “pay-as-you-drive” program;
- Require use of that technology in order to receive a discount; and
- Use technology to track information in addition to miles with no disclosure to the driver or a way for the driver to choose what information is gathered or what is done with that information;

• Gives the Commissioner authority to approve as-yet unknown mileage verification methods that could threaten privacy without going through a public rulemaking; and

• Contains no disclosure, data storage, or security requirements for information insurers may collect.

Response: U.

Mileage verification methods (2632.5(c)(2)(F)(i) To protect consumers insurers should be required to offer more than one verification methodology. An insurer could require insureds to use a technological device to verify mileage. No drivers should have to give up her privacy to receive the discount for driving less.

Response: D + N.6 + N.7 + N.20.

Use of technology to collect mileage and other information (2632.5(c)(2)(F)(i)(5)). The regulation only prohibits the collection of specific location information by technological device but does not prohibit the collection of other data. The devices should only be used to collect mileage information. The regulations prevent insurers from using non-mileage information obtained from a technological device to calculate rates. Accordingly there is no need for any data other than mileage

Any information other than mileage that is collected by technological device should be fully disclosed to the insured but, as written, the regulation doesn't do this.

Response: N.3 + N.20.

Verification methods approved by Commissioner (2632.5(c)(2)(F)(i)(6). Allowing insurers to use “any other method approved by the Commissioner" well encouraged insurers to attempt to sneak questionable verification methods into voluminous class plans. It also opens the door for increasingly invasive technologies to be approved without adequate public notice. All permissible methodologies should be explicitly spelled out in the regulation.

Response: D + N.9.

Consumerwatchdog proposes the following specific amendments to (2632.5(c)(2)(F)(i):

> (i) For any verified mileage program an insurer offers pursuant to section (c)(2)(F), the Second Mandatory Factor shall be verified by one or more of the following methods. <u>An insurer must offer the insured a choice between at least three of the following methods for verifying miles</u>.
>
> 1. by odometer readings of the insured vehicle or vehicles, made by an employee of the insurer, an agent of the insurer; or a third-party vendor retained by the insurer.
> 2. by odometer readings recorded by an automotive repair dealer, as defined by section 9880.1 of the Business and Professions Code, in the ordinary course of the business of servicing a vehicle, provided to the insurer by the policyholder or by a vendor retained by the insurer.

3. by odometer readings obtained from smog check stations licensed by the California Bureau of Automotive Repair provided to the insurer by the policyholder, the California Bureau of Automotive Repair, or a vendor retained by the insurer.
4. by odometer readings reported to the insurer by the insured or by an agent of the insured.
5. ~~by a~~ through the use of a technological device provided to the insured pursuant to section (c)(2)(D). ~~A~~ Such a technological device ~~shall not be used to~~ is prohibited from collecting information ~~about the location of the insured vehicle~~ other than miles driven. Information collected by ~~such~~ a technological device shall only be used to calculate automobile insurance rates.
~~6. by any other method approved by the Commissioner.~~

Response: B + D + N.20.

PP 7-8: III. The proposed regulations violate Proposition 103's ban on unfair discrimination that requires drivers with the same rating characteristics to pay the same premium and the requirement that good drivers be charged 20% less than other drivers pay for the same coverage.

Charging drivers different premiums depending on whether they estimate or verify mileage violates Proposition 103. The rating factor is the number of miles driven -- not how those miles are determined.

Response: Z. Estimated mileage programs are based on estimates. The exact number of miles driven in an estimated mileage program is generally unknown. Therefore, verified mileage programs can be expected to deliver more accurate results and different pricing for those results may be appropriate without unfairly discriminating against estimated mileage program insureds.

Discount for drivers who verify mileage (2632.5(c)(2)(F)(iii)). Providing a discount for use of electronic devices necessarily means that those who do not use an electronic device will receive a surcharge. This makes the use of electronic devices a rating factor under Proposition 103. Since use of electronic devices is not an approved rating factor it is illegal under Proposition 103.

Response: V + Z.

Further, CIC 1861.02(a)(b) (sic) requires optional rating factors to "have a substantial relationship to the risk of loss." There is no evidence that drivers who participate in a mileage verification program are any less risky than those who estimate their miles. Accordingly, the discount/rating factor for use of an electronic device is illegal.

Giving drivers a discount for verifying miles driven gives drivers no incentive to drive less -- it only encourages them to verify their miles driven. As a result an insurer could charge the driver who verifies that he or she drives 10,000 miles, a lower premium than a driver who drives 8000 miles but estimates miles driven.

Response: V + Z.

If the Commissioner keeps this provision he must provide additional guidance regarding the following:

- How much discount is allowed?

  Response: V + Z. The amount of discount permitted depends on how much the insurer can justify, if any, under the regulation.

- Is the discount limited to a one-time sign-up discount or is it recurring every policy period?

  Response: V + Z. This is not specified by the regulation and would depend on the insurer's preference and the insurer's ability to justify the discount as a one time sign-up discount or as a recurring discount at every renewal.

- Does discount imply a reduction in premium as mileage decreases?

  Response: V + Z.

- Does the discount have to equal the "cost savings or actuarial accuracy associated with obtaining and using actual miles driven rather than estimated miles"?

  Response: V + Z. The discount must be based on and justified by those factors.

- How does the insurer demonstrate any "cost savings"?

  Response: V + Z. It is up to the insurer to demonstrate the cost savings. If it is unable to do so the discount will not be approved as part of the class plan.

- What does "actuarial accuracy" mean? [If it is referring to the concept of "risk classification" that is discussed in the actuarial standard of practice (ASOP) number 12, it is virtually meaningless because it permits actuarial judgment and expert opinion to be the sole evidence required to prove risk classification. This is not what the voters intended when enacting the "substantial relationship to risk" language in Proposition 103.]

  Response: V + Z. Actuarial accuracy refers to how accurately losses can be predicted by the application of actuarial science.

Failure to define "actuarial accuracy" will lead to arbitrary application of the discount provision.

Response: V + Z. The department does not believe that the term needs to be defined in this regulation, or that failure to define it will lead to arbitrary application of the discount provision.

Finally the discount would probably violate the good-driver 20% discount for the same coverage mandated by Proposition 103. Since participation in a verification mileage program is not coverage, providing this discount to some but not all good drivers would violate this requirement.

Response: V + Z.

PP 8-9 IV. The regulation creates tools and incentives for insurance companies to cherry-pick desirable drivers and exclude others from mileage savings -- the very redlining that Proposition 103 has helped eliminate.

"Equal" marketing to all insureds (2632.5(c)(2)(F)(v)). The equal marketing provision purports to prevent unfair marketing practices. However, when read in combination with (2632.5(c)(2)(F)(i)) then this section emphasizes that an insurer can choose a single methodology such as a technological device to verify mileage. Consumer Watchdog proposes requiring at least three alternatives be made available to the insured.

Response: D. The final version of the regulations have been amended to remove the requirement to market and promote uniformly but retains the requirement to offer the verified mileage program uniformly to all applicants.

Further there is no way for the department to ensure compliance with the marketing requirements. The requirement to advertise mileage verification programs to all sectors could only be verified in the insurer also submitted advertising plans and budgets but this is obviously not included and would be impractical.

Response: D. The final version of the regulations have been amended to remove the requirement to market and promote uniformly but retains the requirement to offer the verified mileage program uniformly to all applicants.

Because some older cars are incompatible with the new technological devices "equal access" is impossible for insureds with older cars. For the same reason it would be impossible for insurers to comply with 1861.02(b)(1) because they couldn't offer and sell insurance to good drivers with older cars.

Response: N.20 + Y.

Further, "equal access" isn't meaningful if insureds have to sign away their privacy to participate.

The concept of "Grace Miles" in 2632.5(c)(2)(F)(vii) appears to provide insurers an opportunity to single out desirable drivers for hidden discounts because any discount "is paid as a surcharge by those drivers who do not receive it." This is unfairly discriminatory and therefore a violation of Proposition 103.

Response: The provision was in proposed section "(G)(vii) and/or (viii)" and has been removed.

PP 9-10: V. The regulation fails to set standards for what insurer may market has "pay-as-you-drive" or mileage-based insurance.

The regulation fails to meet either of the following two stated goals: to more fully implement the second mandatory auto rating factor and make automobile insurance premiums more closely reflect the actual number of miles and insured drives annually."

Response: G + U.

Requirements on width of mileage rating bands for verification program only 2632.5(c)(2)(F)(vi). Currently mileage bands for some insurers are so large that drivers with vastly different mileage sometimes pay the same premiums. For many insurers and drivers, the new rating band requirements will change nothing for the following reasons.

First, the mileage bands in the new regulations only apply to drivers who verify. Therefore, insurers that have no verification program will not have to comply with the new mileage band provisions. Second, many insurers already comply with the new mileage band requirements (2000 miles or less). This will not result in savings to consumers or more closely tying of premiums to mileage. Third, just because the relativities must be "determined specifically" for each mileage band the relativities for two or more bands could still be the same. For these reasons smaller mileage bands are necessary and the relativities for each band must be significantly different.

Response: B + K.

Consumer Watchdog recommends removing the existing provision and the following should be placed in its own subdivision of section 2632.5(c)(2):

> Each class plan shall employ at least 12 rating bands for the Second Mandatory Factor. The rating factor relativities for miles driven shall increase from lowest mileage band to highest mileage band. The relativity for each band should be at least 1.01 times greater than the relativity of the next lowest mileage band. Each class plan should contain at least 10 rating bands between 4,000 and 13,999 miles.

Response: B + K.

Green Seal of Approval

The Department should set standards for insurers to earn a "Green seal of approval." To meet the standards the insurers would have to go above and beyond the mandate of these regulations to more closely tie premiums to miles driven. For example, one requirement might be for an insurer to have at least 20 rating bands (instead of the smaller number of bands required by the regulation). Insurers could then use this Green Seal in advertising and the department could highlight companies that had been awarded the Green Seal on its web site. This would encourage insurers to implement PAYD programs in order to be more competitive in California.

Response: B + E + J.

PP 10-11: VI. The proposed amendments create loopholes in Proposition 103's requirement that number of miles driven annually be the second-most important auto rating factor.

Combination of the Second Mandatory Factor with Certain Optional Rating Factors 2632.5(c)(2)(F)(vii). The regulations should not allow insurers to combine optional rating factors with the second mandatory factor (number of miles driven). This is a giveaway to insurers with no evidence that the impact of any rating factor varies in combination with miles driven. In fact combining factors creates the opportunity for insurers to hide the effects of miles driven so it actually has the exact opposite effect of the stated purpose of the regulations to "improve the correlation between automobile premiums and actual number of miles [driven]."

The regulation is unclear whether the ability to combine optional factors with the second mandatory factor applies for all auto insurance or just when mileage is verified. If it only applies when mileage is verified (and not when mileage is estimated) it violates the prohibition against unfairly discriminatory rates because drivers with identical characteristics will pay different amounts for the same coverage based on the combined factors.

The ability to combine factors is new and would require a full public notice and a hearing.

Response: H + Z + BB.

PP 11-17: VII. Price per Mile Options:

Consumer Watchdog believes that an acceptable price per mile system may be possible but they were unable to define one in time for these comments. However they provide a general outline for what must be included in a price per mile system. The department should convene a working group of experts and interested parties to develop such a system.

Response: U.

The price per mile option should be a payment option rather than a rating factor. Accordingly Consumer Watchdog recommends removing the price per mile option from the rating factor regulations altogether.

Response: B + T.

A Price Per Mile Option that could work would include the following broad concepts:

1. Calculating the premium for the policy period using the insurer's fully compliant class plan including an estimate for miles driven and any acceptable means of verification pursuant to Section 2632.5 (c)(2).
2. The insurer offers the consumer the current option of paying that full premium corresponding to the appropriate mileage band relativity for the policy period and a new option of paying for insurance by the mile. The per-mile rate is calculated by converting the premium calculated under the current payment option to a per mile

rate. (See discussion below of difficulties associated with particular methods of calculating this per mile rate.)
3. The insurer and the consumer opting for the price per mile payment option agree to settle up at the end of the policy period – a payment by the insurer to the consumer if fewer miles are driven than estimated or a payment by the consumer to the insurer if more miles are driven than estimated.

Response: T.

P12: How Would Price per Mile Work?

A Price per Mile Option cannot skew the factor weights or otherwise wreak havoc with Proposition 103's factor waiting requirements, current weighting methodology and ability for regulatory oversight.

The regulation must specify how price per mile will be calculated. The regulations currently violate Proposition 103 because they allow a different calculation based solely on whether miles are verified with the result that two identical insureds who drive the same number of miles will pay a different amount for the same insurance.

Response: Z.

Hybrid Time Basis and Miles Basis Policies (§ 2632.5(c)(2)(G)(xi)(2) and (3)); and Offering non-liability coverages on a basis other than set time (§ 2632.5(c)(2)(G)(ii)).

All coverages must be sold on a set time period basis even under a pay per mile option.. Further the mileage factor relativities must be applied using one car-year as the unit of exposure.

Non time-based auto physical damage policies could create problems for lenders that have an ensured interest in the vehicle if the insurance expires due to exhaustion of purchased miles.

As written, insurers could sell non-liability coverages on the basis of "per mile, per gallon of gas, only for specific cities and counties, or whatever else they can think up." If the intention is to allow insurers to sell non-liability coverages on a per mile basis, the regulation should be specific.

Response: T. The referenced provision (G) has been eliminated.

Insurer not required to charge same price for every mile (§2632.5(c)(2)(G)(ix)

The biggest problem with this section is that it implies that insurers *can* charge the same price for every mile purchased. This could result in the second mandatory factor becoming more important than the first mandatory factor in violation of Proposition 103. Insurers must charge different amounts for differing bands of annual miles driven.

Allowing insurers to charge more for miles in excess of those purchased does not make sense because in each successive band the cost per mile should be less (not more).

Response: K. The referenced provision (G) has been eliminated.

<u>Insurer must comply with auto rating factor regulations (§2632.5(c)(2)(G)(x))</u>

Insurers are already required to comply with the overriding factor regulations. Therefore this section is unnecessary.

Response: The referenced provision (G) has been eliminated.

PP 14-15: Sample Price per Mile Methodology's/Tables

Consumer Watchdog prepared two possible methods for calculating price per mile. These methods and tables assume that the price per mile is calculated by dividing the rate by the estimated number of miles driven, and that at the end of the policy the premium will be adjusted for the actual number of miles driven. The same insured who drives exactly 9000 miles per year would wind up paying vastly different premiums based solely on the number of miles she estimated she would drive at the beginning of the policy. This section sets out the foundation for the examples that follow on pages 16 and 17.

Response: T. Provision (G) has been eliminated.

PP 16-17: The Price per Mile Option could radically change the relative cost (both in premium and rating factor relativity) for drivers who drive significantly more or less than their original estimate.

Consumer Watchdog provides numerous examples and explanations of unfairly discriminatory results based on the above sample per mile methodology. A typical example provided is following:

Example A. Driver A estimated 7000 miles but actually drove 9000 miles. She will end up with an "effective relativity of 1.2573" which is more than an estimator who estimated driving 19,000 miles.

Response: T. Provision (G) has been eliminated.

The methodology for calculating the price per mile should be outlined in the regulation; otherwise insurers could use different methodologies for different drivers.

Using median miles as the denominator leads to excessive premiums and a person who drives less than another driver can pay substantially more. Using maximum miles as the denominator tempers, but does not eliminate the problem.

Under the price per mile proposal some drivers will pay more if they drive less.

Response: T. Provision (G) has been eliminated. The regulation is not intended to guarantee that every consumer that chooses a mileage verification program will necessarily benefit from that choice.

PP 18-19: VII. Various vague and confusing provisions fail to protect consumers or meet the requirements of Proposition 103.

Adding "or prospectively" to limitation on adjusting premiums without specific notice for policyholders who estimate (§2632.5(c)(2)(F)(ii).

The proposed amendment does not make sense. As written, this section appears to prohibit an insurer from using actual miles driven to inform the mileage estimate for the next policy period. Premiums are set before the policy period, so they are by their nature "prospective" and a "prospective adjustment" is basically establishing the premium before the policy period commences.

Response: An example of a "prospective" adjustment would be an insurer that verifies the number of miles driven in the previous policy and uses that number as the basis for the premium at renewal.

Insurer can require reporting of miles at any time (§2632.5(c)(2)(G)(iv).

In the price per mile program regulations there are insufficient restrictions on when insurers can require drivers to report/provide mileage ratings in order to prevent abuse. Such abuse could take the form of effectively removing the "choice" by pressuring insureds to accept the use of electronic device.

Response: T. The referenced provision (G) has been eliminated.

Additional verification methods for Price per Mile Option (§2632.5(c)(2)(G)(v)

The two additional verification methods offered in the price per mile section failed to require the insurer to offer a choice of verification methods to the insured.

Insurer option to refund (§2632.5(c)(2)(G)(vi)

This price per mile section is unclear whether a refund is required. This should be clarified.

"Grace Miles" (§2632.5(c)(2)(G)(vii)

The term "Grace Miles" in the price per mile section needs to be defined. If the term refers to free miles is likely that it violates the second mandatory factor.

Insurer communication to report Miles (§2632.5(c)(2)(G)(vii).

In this price per mile section policyholders should be given the option of choosing from several options regarding how to communicate odometer readings to the insurer

P19: Hybrid Time Basis and Non-- time Basis Policies with "Notice" at Policy Inception (§2632.5(c)(2)(G)(xi)(2).

In this price per mile section, notice that policy inception is not meaningful and probably violates CIC § 663.

Response to previous five headings and paragraphs: T. The referenced provision (G) has been eliminated.

Amendment to section allowing combination of mandatory factors with optional factors 2632.5(e)

Consumer Watchdog opposes combining optional factors with mandatory factors for many of the same reasons identified with regard to section 2632.5(c)(2)(F)(vii). Specifically, the regulations should not allow insurers to combine optional rating factors with a mandatory factor. This is a giveaway to insurers with no evidence that the impact of any rating factor varies in combination with the mandatory factor. In fact combining factors creates the opportunity for insurers to hide the effects of the mandatory factor.

Response: H + L + M.2.

Consumer Watchdog's final paragraph implores the Commissioner to conduct workshops and full public hearings regarding the June 24 amendments in order to provide a complete understanding and to more closely tie premiums to miles driven.

Response: B + J + BB. The Department conducted a well attended public workshop prior to noticing this regulation in June, 2008. This commenter attended the workshop.

2-22 John Anzulis;

The commenter objects to the proposed regulation because mileage verification would be problematic.

Response: Many insurers can be expected to continue to offer mileage estimation programs. For those that offer mileage verification programs, the regulations specify various methods by which mileage would be verified.

Also, rural drivers would be greatly disadvantaged by a price per mile program because rural driving, though high mileage, is safe compared to low-mileage yet accident prone urban driving.

Response: X.

The comment also includes a copy of a Department issued press release.

Response: U.

2-23 John A. Sebastinelli; Exigen

P1, ¶¶1-2: "*Section 2632.5(2)(F)(ii), page 4, "Second Mandatory Factor", in the context of policy renewal (where this provision would only apply) it should refer to "the effective date of the renewed policy." The retroactive adjustment provision should allow for the adjustments to be applied upon discovery of the actual mileage to avoid having large unpaid premium collections in addition to the premium for the renewal. While the regulations do not preclude this option, the same should specifically state the possibility of adjusting the premium (with a 20 day notification of the change).*"

Response: B. The Commissioner disagrees that "renewed" should be added as the penultimate word in this sentence. When a policyholder purchases his or her first policy from a particular insurer, the insurer can provide notice at that time that premiums will be adjusted based on actual miles driven. The insurer need not wait until a policy has been renewed before providing such notice. Adjustments may be made upon discovery of actual mileage in a price per mile insurance option.

P1, ¶3: "*In section (G) (potentially in xi) should state that the "price per mile" option could be implemented either with prospective or retroactive billing. In the prospective model, miles are purchased in advance for a specific range of odometer reading, (e.g. 18000 – 28000 odometer miles) and the applicable coverages are in effect during this range and not valid or expired outside the range. In the retroactive miles plan, the coverages begin with a specific odometer reading (e.g. 18000 miles) and are reported periodically (e.g. bimonthly) and billed for as used. If the requirements for policy terms are allowed monthly or quarterly, there may be other viable hybrid options."*

Response: T. As revised, the regulations allow an insurer to offer a price per mile option which complies with all applicable laws.

P2, ¶1: "*Section (G) (iv) should list "renewal" and "purchase of additional miles" as two specific instances when the insurer may require reporting of the actual miles.*"

Response: T. As revised, the regulations allow an insurer to offer a price per mile option which complies with all applicable laws.

P2, ¶2: "*Section (G) (viii) does not clearly state the purpose of notification but merely implies that it serves as a reminder to the insured to report the actual mileage.*"

Response: T. As revised, the regulations allow an insurer to offer a price per mile option which complies with all applicable laws.

P2, ¶3: "*Section (G) (xi) (3), could be difficult to implement unless the insured agrees to a monthly reporting of actual miles to facilitate the notification requirement.*"

Response: T. As revised, the regulations allow an insurer to offer a price per mile option which complies with all applicable laws.

P2, ¶4: "*Section (J), would encourage the "clever" policyholders to switch carriers to avoid reporting of actual miles (the persistency factor could offset part of such motivation).*"

Response: Q. This CCR section only relates to the ability of an insurer to decline to issue, cancel, or nonrenew a policy. It does not address the ability of a policyholder to change insurers.

P2, ¶5: "*The remedy of charging a higher rate for expired miles driven in a claims instance (option 1) is valid, but onerous and not "consumer friendly." Another approach would be to keep the cover in place but with a higher deductible. It serves the same purpose, but is simpler and more readily explainable to the consumer.*"

Response: T. As revised, the regulations allow an insurer to offer a price per mile option which complies with all applicable laws.

2-24 Rex Frazier and Kim Dellinger; Personal Insurance Federation of California (PIFC)

P1, ¶¶1-4: Appreciates the CDI's interest in improving the auto insurance rating system. The specific requirements of the regulations could make adoption of Pay Drive less likely. But is hopeful that modifications will be a positive first step in encouraging a multitude of different innovative Pay Drive approaches.

Response: A + G.

P2, ¶1-2: Section 2632.5(c)(2)(E) Commenter suggests expanding the verification of miles to any government agency that may hold relevant mileage information.

Response: F.

P2, ¶3: Section 2632.5(c)(2)(F)(i) The proposed limitations on tracking location are overly broad and would prohibit safety devices that provide roadside services. The commenter proposes the new language below:

> Section 2632.5(c)(2)(F)(i)5 by a technological device provided to the insured pursuant to section (c)(2)(D). ~~A technological device shall not be used to collect information about the location of the insured vehicle.~~ <u>Information collected by a technological device about the location of the insured vehicle shall not be used in rating or, unless expressly permitted by the insured or registered vehicle owner, to settle claims.</u> ~~Information collected by a technological device shall only be used to calculate automobile rates.~~

Response: F + N.20. The substance of the comment is adopted into the revised/final version.

P3, ¶1/2: Section 2632.5(c)(2)(F)(iii) Discounts should not be the same for all who participate in the verified mileage program. Tiered discounts should be allowed based on the type and quality of verification used and it meets the CDI's requirements for demonstrated cost savings or actuarial accuracy.

Response: F + V.

P3, ¶3: Section 2632.5(c)(2)(F)(v) Commenter is unsure if this is within the Commissioner's powers. By requiring insurers to make verifiable mileage available to all drivers goes beyond the scope of Section 1861.02(b) which relates only to Good Driver's. By forcing insurers to make verifiable mileage available to all drivers will eliminate innovation not encourage it.

Response: N.13 + O.

P4, ¶1: The language of Section 2632.5(c)(2)(F)(v) could dictate company marketing strategies and micromanages the strategies to "intolerable levels of second guessing."

Response: F. The referenced marketing requirement has been removed.

P4, ¶2: The proposed regulations should allow pilot programs that are non-discriminatory. By requiring that it be made available to millions of consumers simultaneously could stifle innovation.

Response: B + E + J.

P4, ¶¶5-7: Section 2632.5(c)(2)(F)(vi) the proposed mileage bands appear to be arbitrary. The CDI does not indicate if any studies were conducted or consulted in coming up with the proposed mileage bands. Nor did it consider the impact to insurers; programming cost, marketing costs and integration into insurers business models. The commenter also believes that by requiring mileage bands would lead to fewer companies participating in Pay-Drive. By allowing flexible, non-determined mileage bands will allow insurers to innovate and ensure that the bands chosen best fit the insurer's business plan.

Response: K.

P5, ¶1: Section 2632.5(c)(2)(F) the commenter recommends that the combining of the second mandatory rating factor with the listed optional rating factors should be applied to both verified mileage and non-verified mileage.

Response: B + H.

P5, ¶¶2-4: Section 2632.5(c)(2)(F)(v) The commenter opposes adding the weight ordering language to the proposed regulation. They believe that the CDI developed an underground "Years Licensed template" based on Section 2632.5(e) and it has caused significant disruption and a departure from the cost based pricing.

The commenter proposes the following language:

> Section 2632.5(c)(2)(F)(vii) Mandatory and optional rating factors may be combined with one another, with the exception of Claims Frequency and Claims Severity. No optional rating factor can yield a weight that is higher than the third mandatory factor. ~~If an insurer elects to combine the Second Mandatory Rating factor with any another optional rating factor as provided in section (c)(2)(F), the insurer shall demonstrate in its class plan that the rating factors used in combination, when considered individual, comply with the weight ordering requirements of Section 2632.8~~

Response: B + H.

P6, ¶1-3: The commenter has great enthusiasm for PPM but the time frame allows only preliminary comments. The commenter is concerned that the detailed rigid approach to PPM will limit the number of drivers that would implement it.

Response: T.

P6, ¶4: While PPM will improve rating accuracy it will also require sophisticated systems and technology to track mileage. If recovery costs are not allowed then PPM could be delayed. In addition claims processing and coverage verification would be a problem if it is unclear if a policy was in effect.

Response: T + W.

P6, ¶5: Section 2632.5(c)(2)(G)(ii) By allowing separate policies for liability and other coverage's based on time and miles causes costs for ne contract payments method claims reporting and cancellation and notification notices.

Response: T. The referenced provision (G) has been eliminated.

P7, ¶1: Section 2632.5(c)(2)(G)(iii) requiring 24 hour access for a PPM program introduces tech cost without the certainty of cost recovery. Few if any carriers would file for PPM absent rate relief.

Response: The referenced provision (G) has been eliminated.

P7, ¶2: Section 2632.5(c)(2)(G0(iii) This list seems overly prescriptive and raises the question whether it applies to estimated mileage programs.

Response: The referenced provision (G) has been eliminated.

P7, ¶3: Section 2632.5(c)(2)(G)(xi) applauds the three options to implement PPM but believes without more discussion carriers would not sign on.

Response: The referenced provision (G) has been eliminated.

P7, ¶4: Section 2632.5(c)(2)(G)(xi)(2) it is unclear how insurers would know when miles have expired. Tech devices could provide the information but may not be available for all vehicles or by all insurers. Without tech devices carriers will have to rely on insured's to report mileage. This could lead to inaccuracy and fraud.

Response: The referenced provision (G) has been eliminated.

P8, ¶1: How the notice requirements (CIC section 663) would work for PPM is unclear.

Response: T.

P8, ¶2: Section 2632.5(c)(2)(G)(xi)(2)because applications can be submitted electronically and the notification agreement should be allowed in the same form.

Response: Response: The referenced provision (G) has been eliminated.

P8, ¶3: Section 2632.5(c)(2)(G0(xi)(3) Of the three this one is the most problematic. The burden is on the insurer to know the mileage and without a tech device guaranteeing coverage for 30 or 20 days is an incentive to delay reporting mileage.

Response: The referenced provision (G) has been eliminated.

P9, ¶1/2 Section 2632.5(c)(2)(H) the commenter needs clarification as to what will be need to filed when a company is ready to roll out PPM:

- Submit an entire class plan with sequential analysis
- File as two separate groups if using separate mileage bands for actual and estimated mile

Commenter believes that requiring two separate filings will be a disincentive for carriers to sing on to PPM.

Response: D + AA.

P9, ¶3: Section 2632.5(c)(2)(I) Commenter asks that section be revised to clarify that an insurer may request but not require an applicant submit mileage information from a previous insurer.

Response: B + Q.

P10, ¶1: Section 2632.5(e) This section places unnecessary limitations on auto insurance rating that are not required by Prop 103. The limitations on combining mandatory and optional rating factors should be allowed where they can demonstrate a substantial relationship to the risk of loss. The second sentence, added in 2006, has caused tension between years licensed and miles driven and has cause unfair cross subsidies of some drivers by other.

The commenter proposes the following language:

> <u>2632.5(e) Mandatory and optional rating factors may be combined with one another, with the exception of Claims Frequency and Claims Severity. No optional factor may yield a greater weight that is higher than the third mandatory factor.</u>

Response: B + H.

P10, ¶2: Increased flexibility and the elimination on unnecessary restrictions are necessary to increase the likelihood on market adoption.

Response: H +T.

2-25 Scott E. Creutzmann; Ameriprise Financial, Inc.

P1, ¶1: The comment generally supports comments to the June 24. 2009, revision provided by ACIC.

P1, ¶¶1 and 2: Regarding (F)(i)(5) – The technological device provision would allow insurers to collect too much information without disclosure to consumers. The regulation should restrict the information collected by technological devises to mileage information only.

Response: N.19 + N.20.

2-26 Sidney Lindmark

Strongly supports pay-as-you-drive as an equitable, feasible and timely response to consumer needs. Drives less than 2000 miles per year yet automotive insurance is a major expense.

Response: A.

2-27 J Gardner

Favors pay-as-you-drive insurance. Encourages commissioner to allow GPS tracking. Supports allowing insurers to use driving behaviors to accurately charge drivers for insurance.

Response: A + M.1 + N.20.